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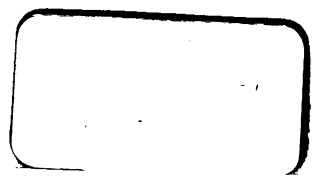
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# THE JUDICIAL CODE

BEING THE

JUDICIARY ACT OF THE CONGRESS OF THE UNITED STATES, APPROVED MARCH 3, A. D. 1911.

WITH AN INTRODUCTION

AND

ANNOTATIONS

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# THE JUDICIAL CODE.

## INTRODUCTION.

**Its Title.** The Act of March 3, 1911, abolishing the Circuit Courts, enlarging the jurisdiction of the district courts, re-enacting the statutory provisions relating to the Supreme Court, Circuit Courts of Appeals, and Court of Claims, and embracing the enactments establishing the Commerce Court and the Court of Customs Appeals and defining their respective jurisdiction, is, by the terms of its § 296, to be designated and cited as, "The Judicial Code."

Under this modest title, Congress has produced what is probably the most important, as it is certainly the most compact, code of nisi prius and appellate jurisdiction and procedure in all history, considering the wide range of its subject-matter, and the great number of courts affected by it. Whatever faults may be developed in it by the crucible of Time, it is a masterpiece of brevity and condensation.

After a study of this Code, it will be instructive to compare its provisions with those of the first Judiciary Act, of 1789. It is remarkable to note how many of its provisions have endured throughout the life-time of our Commonwealth. We gain from the comparison a renewed admiration for the lawyers of the First Congress of the United States.

**The Constitutional Provision.** The authority vested in Congress to establish or abolish courts of jurisdiction inferior to the Supreme Court, is embodied in Article III, § 1, of the Constitution in these words: "The judicial power of the United States shall be vested in one Supreme Court, and in

such inferior Courts as the Congress may from time to time ordain and establish."

Of this provision Mr. Justice Story said:

"The language of the article is manifestly designed to be mandatory upon the legislature. Its obligatory force is so imperative that Congress could not, without a violation of its duty, have refused to carry it into operation. The judicial power of the United States shall be vested (not may be vested) in one supreme court, and in such inferior courts as Congress may, from time to time, ordain and establish. Could Congress have lawfully refused to create a supreme court, or to vest it in the constitutional jurisdiction? * * * If, then, it is the duty of Congress to vest the judicial power of the United States, it is a duty to vest the whole judicial power. The language, if imperative as to one part, is imperative as to all. If it were otherwise, this anomaly would exist, that Congress might successively refuse to vest the jurisdiction in any one class of cases enumerated in the constitution, and thereby defeat the jurisdiction as to all; for the constitution has not singled out any class on which Congress are bound to act in preference to others.

"The next consideration is as to the courts in which the judicial power shall be vested. It is manifest that a supreme court must be established; but whether it is equally obligatory to establish inferior courts is a question of some difficulty. If Congress may lawfully omit to establish inferior courts, it might follow that in some of the enumerated cases the judicial power could nowhere exist. The Supreme Court can have original jurisdiction in two classes of cases only, viz., in cases affecting ambassadors, other public ministers and consuls, and in cases in which a state is a party. Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself; and if, in any of the cases enumerated in the constitution, the state courts did not then possess jurisdiction, the appellate jurisdiction of the Supreme Court (admitting that it could act on state courts) could not reach those cases, and, consequently, the injunction of the constitution, that the judicial power 'shall be vested,'

would be disobeyed. It would seem, therefore, to follow that Congress are bound to create some inferior courts, in which to vest all that jurisdiction which, under the constitution, is exclusively vested in the United States, and of which the Supreme Court cannot take original cognizance. They might establish one or more inferior courts; they might parcel out the jurisdiction among such courts, from time to time, at their own pleasure. But the whole judicial power of the United States should be, at all times, vested either in an original or appellate form, in some courts created under its authority."

Martin v. Hunter's Lessee, 1 Wheat. 306, 328, 4 L. Ed. 97, 103.

The judicial system thus installed as an engine in the tripartite machinery of our government, by the terms of its enabling constitutional provision, consists of two classes of courts; the Supreme Court, fixedly established as the great court of last resort, and that undefined class of inferior courts, not even given a name by the constitution, which may be created or abolished, and whose jurisdiction may be enlarged or diminished by Congress at will, in response to the changing needs of society.

"The original jurisdiction of the supreme court of the United States is conferred by the constitution, and congress has the power to enlarge or restrict it. But the jurisdiction of inferior courts is derived from and is subject to the absolute control of congress, and may be changed or taken away at its pleasure. Existing courts may be abolished, and their jurisdiction, and all cases pending in them, whatever their condition, transferred to other existing courts, or to new courts. Repeated instances might be cited where congress has exercised this power. The celebrated Act of April 29, 1802, (2 Stat. at L. 156,) is one. It annulled the courts established by the act of February 13, 1801, (2 Stat. at L. 89,) and ordered the transfer of all cases pending in them to the present circuit courts, which it created. The constitutional validity of the ninth section, which directed the remission of the cases, was upheld by the supreme court in Stuart v. Laird, 1 Cranch, 299; the court saying:

" 'Congress have constitutional authority to establish, from time to time, such inferior tribunals as they may think proper, and transfer a cause from one such tribunal to another. In this last particular there are no words in the constitution to prohibit or restrain the exercise of legislative power.'

"The act of March 3, 1863, (12 Stat. at L. 762,) is another illustration in point. It abolished the circuit, district, and criminal courts of the District of Columbia, and transferred all their cases to the supreme court of the district. The various acts transferring cases pending in the territorial courts to the district and circuit courts of the United States, on the admission of new states, are also instances. In all such legislation the new courts are merely substitutes for the old courts, and as regards their jurisdiction and capacity to dispose of cases remitted to them, are the same courts. Power to re-examine facts tried by a jury goes with the cases as a matter of course."

Nelson, J., in United States v. Haynes, 29 Fed. Rep. 691, 696.

**The Earlier Judiciary Acts.** The judiciary act of 1789, in addition to the fixing of the membership of the Supreme Court, giving it a Chief Justice and five associate justices, created thirteen district courts which were grouped into three circuits; the Eastern circuit (comprising the districts of New Hampshire, Massachusetts, Connecticut, and New York), the Middle Circuit (comprising the districts of New Jersey, Pennsylvania, Delaware, Maryland and Virginia), and the Southern circuit (comprising the districts of South Carolina and Georgia); Maine and Kentucky were districts which were not included in either of the circuits.

Act of September 24, 1789, § 4, 1 Stat. at L. ch. XX, p. 74.

By the terms of the Judicial Code, §§ 289, 301, the Circuit Courts established by the Act of 1789 are to be abolished on January 1st, 1912.

The Act of 1789 conferred Appellate jurisdiction over certain classes of cases in the district court, upon the Circuit Court. This appellate jurisdiction was terminated by the

Judiciary Act of 1891. The Act of 1789 provided that the supreme court should have, "appellate jurisdiction from the circuit courts and courts of the several states, in the cases hereinafter specially provided for. * * * And shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States. * * * That all the before mentioned courts of the United States shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of the law. * * * Final judgments and decrees in civil actions and suits in equity in a circuit court, brought there by original process, or removed there from courts of the several states, or removed there by appeal from a district court, where the matter in dispute exceeds the sum or value of $2,000, exclusive of costs, (may) be re-examined and reversed or affirmed in the Supreme Court, the citation being in such case signed by a judge of such circuit court, or justice of the Supreme Court, and the adverse party having at least thirty days' notice."

1 Stat. at L. 81, chap. 20, §§ 13, 14, 22.

The day preceding the admission of the State of Ohio to the Union, the number of circuits was increased to six (Act of April 20, 1902, 2 Stat. at L., p. 157), but the Maine and Kentucky districts continued to remain outside of the circuits, nor was any provision made for embracing Ohio in either of them. A seventh circuit was formed of the States of Tennessee, Ohio and Kentucky in 1807 (Act of Feby. 24, 1807, 2 Stat. at L. p. 420.) In 1837 a Seventh Circuit was formed of the States of Ohio, Indiana, Illinois and Michigan, an eighth circuit was formed of Tennessee, Kentucky and Missouri, and a ninth of Alabama, Mississippi, Louisiana and Arkansas (3 Stat. at L. p. 176.) The present boundaries of the nine circuits are given in § 116, The Judicial Code, *post.*

By the Act of February 13, 1801, the number of justices of the Supreme Court was reduced, to take effect upon the first vacancy occurring, to five—the Chief Justice and four Associate Justices. The number was restored to the original six by the Act of March 8, 1802, increased to seven by the Act of February 24, 1807, to nine by the Act of March 3, 1837, to ten by the Act of March 3, 1863, and reduced to seven by the Act of July 23, 1866. The present number, comprising a Chief Justice and eight Associate Justices, was established by the Act of April 10, 1869.

**The Circuit Courts,** as we have seen from the constitutional provision, were purely the creatures of congressional legislation; they were not designated by name or as to jurisdiction in the constitution, and hence the original creation of the circuit and district courts was purely fortuitous and arbitrary, and the continuance of the existence of the circuit courts for over one hundred and twenty years was due purely to the forbearance of Congress in not earlier abolishing it. The reason for their naming in the first instance was largely sentimental, the title of the several Circuit Justices doubtless having much to do with the naming of the courts which they assisted when their graver duties upon the bench of the Supreme Court permitted.

The limitations due to the manner of their creation by Congressional enactment, with the concomitant infirmities of a jurisdiction whose metes and bounds were fixed (and might be changed) at the will of Congress, have thus been illumined by the Supreme Court:

"Circuit Courts do not derive their judicial power immediately from the Constitution, as appears with sufficient explicitness from the Constitution itself. * * * Consequently, the jurisdiction of the Circuit Court in every case must depend upon some Act of Congress, as it is clear that Congress, inasmuch as it possesses the power to ordain and establish able courts inferior to the Supreme Court, may also define their jurisdiction. Courts created by Statute can have no jurisdiction in controversies between party and party but such as the statute confers."

Mr. Justice Clifford in Case of the Sewing Machine Companies, 85 U. S. (11 Wall.) 553, 21 L. Ed. 914.

All of this applies with equal cogency to the District Courts, to which, by the enactment of The Judicial Code, Congress has transferred the jurisdiction, and the pending labors, of the Circuit Courts (§§ 289, 290).

The Circuit Courts have had their jurisdiction defined by § 629, R. S. U. S., as follows:

"The circuit courts shall have original jurisdiction as follows:

"First. Of all suits of a civil nature at common law or in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and an alien is a party, or the suit is between a citizen of the State where it is brought and a citizen of another State: *Provided,* That no circuit court shall have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange."

"Second. Of all suits in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and the United States are petitioners."

These two paragraphs (first and second) have been superseded by § 1 of the Act of March 3, 1875, ch. 137, 18 Stat. at L. 470. 4 Fed. Stat. Ann. 265, which reads:

"§ 1. That the Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners, or in which there shall be a controversy between the citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, or a controversy between citizens of the same State claim-

ing lands under grants of different States, or a controversy between citizens of a State and foreign states, citizens, or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, and shall have exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except as otherwise provided by law, and concurrent jurisdiction with the district courts of the crimes and offenses cognizable by them. But no person shall be arrested in one district for trial in another in any civil action before a circuit or district court; and no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant; nor shall any circuit or district court have cognizance of any suit, except upon foreign bills of exchange, to recover the contents of any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made; and the circuit courts shall also have appellate jurisdiction from the district courts under the regulations and restrictions prescribed by law."

"Third. Of all suits at common law where the United States, or any officer thereof suing under the authority of any act of Congress, are plaintiffs.

"Fourth. Of all suits at law or in equity, arising under any act providing for revenue from imports or tonnage, except civil causes of admiralty and maritime jurisdiction, and seizures on land or on waters not within admiralty and maritime jurisdiction, and except suits for penalties and forfeitures; of all causes arising under any law providing internal revenue, and of all causes arising under the postal laws.

"Fifth. Of all suits and proceedings for the enforcement

of any penalties provided by laws regulating the carriage of passengers in merchant vessels.

"Sixth. Of all proceedings for the condemnation of property as prize, in pursuance of section fifty-three hundred and eight, Title 'Insurrection.'

"Seventh. Of all suits arising under any law relating to the slave-trade.

"Eighth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties against the person to whom such debenture was originally granted, or against any indorser, to recover the amount of such debenture.

"Ninth. Of all suits at law or in equity arising under the patent or copyright laws of the United States.

"Tenth. Of all suits by or against any banking association established in the district for which the court is held, under any law providing for national banking associations.

"Eleventh. Of all suits brought by any banking association established in the district for which the court is held, under the provisions of Title 'The National Banks,' to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title.

"Twelfth. Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several States.

"Thirteenth. Of all suits to recover possession of any office, except that of elector of President or Vice-President, Representative or Delegate in Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided,* That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of

the United States, and secured by any law to enforce the right of citizens of the United States to vote in all the States.

"Fourteenth. Of all proceedings by the writ of quo warranto, prosecuted by any district attorney, for the removal from office of any person holding office, except as a member of Congress or of a State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States.

"Fifteenth. Of all suits to recover pecuniary forfeitures under any act to enforce the right of citizens of the United States to vote in the several States.

"Sixteenth. Of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

"Seventeenth. Of all suits authorized by law to be brought by any person on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty, Title 'Civil Rights.'

"Eighteenth. Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act.

Nineteenth. Of all suits and proceedings arising under section fifty-three hundred and forty-four, Title 'Crimes.'

"Twentieth. Exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offenses cognizable therein." (This paragraph was superseded

by and re-enacted in § 1 of the Act of March 3, 1875, as above set forth in connection with the first and second paragraphs of this section.)

**Former Jurisdiction of the District Courts.** In the future, as in the past, a general understanding of the respective jurisdictions of the circuit and district courts as they continued to exist until January 1, 1912, will be indispensable to the student of the Federal decisions. Furthermore, without such an understanding of the historical jurisdiction of the district courts, a proper understanding of the reasons which led to the adoption of The Judicial Code, and of the radical and extensive change of procedure resulting from its enactment, can hardly be had.

By § 563, R. S. U. S., the jurisdiction conferred on district courts is as follows:

"First. Of all crimes and offenses cognizable under the authority of the United States, committed within their respective districts, or upon the high seas, the punishment of which is not capital, except in the cases mentioned in section fifty-four hundred and twelve, Title 'Crimes.'" (§ 5412 relates to the deposit of fraudulent papers in the archives of the surveyor-general's office in California.)

"Second. Of all cases arising under any act for the punishment of piracy, when no circuit court is held in the district of such court.

"Third. Of all suits for penalties and forfeitures incurred under any law of the United States.

"Fourth. Of all suits at common law brought by the United States, or by any officer thereof, authorized by law to sue.

"Fifth. Of all suits in equity to enforce the lien of the United States upon any real estate for any internal-revenue tax, or to subject to the payment of any such tax any real estate owned by the delinquent, or in which he has any right, title, or interest.

"Sixth. Of all suits for the recovery of any forfeiture or damages under section thirty-four hundred and ninety, Title 'Debts due by or to the United States;' and such suits may be

tried and determined by any district court within whose jurisdictional limits the defendant may be found.

"Seventh. Of all causes of action arising under the postal laws of the United States.

"Eighth. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors in all cases the right of a common-law remedy, where the common law is competent to give it; and of all seizures on land and on waters not within admiralty and maritime jurisdiction. And such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts. And shall have original and exclusive cognizance of all prizes brought into the United States, except as provided in paragraph six of section six hundred and twenty-nine.

"Ninth. Of all proceedings for the condemnation of property taken as prize, in pursuance of section fifty-three hundred and eight, Title 'Insurrection.'

"Tenth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture.

"Eleventh. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty-five, Title 'Civil Rights.'

"Twelfth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law of the United States to persons within the jurisdiction thereof.

"Thirteen. Of all suits to recover possession of any office, except that of elector of President or Vice-President, Repre-

sentative or Delegate in Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote on account of race, color, or previous condition of servitude: *Provided,* That such jurisdiction shall extend only as far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the States.

"Fourteenth. Of all proceedings by the writ of quo warranto, prosecuted by any district attorney, for the removal of any person holding office, except as a member of Congress, or of a State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States.

"Fifteenth. Of all suits by or against any association established under any law providing for national banking associations within the district for which the court is held.

"Sixteenth. Of all suits brought by any alien for a tort 'only' in violation of the law of nations, or of a treaty of the United States.

"Seventeenth. Of all suits against consuls or vice-consuls, except for offenses above the description aforesaid.

"Eighteenth. The district courts are constituted courts of bankruptcy, and shall have in their respective districts original jurisdiction in all matters and proceedings in bankruptcy.

**The Court of Claims.** The Court of Claims was established by the Act of February 24, 1855. It is a court of special jurisdiction, comprehending, generally, the adjustment of claims against the United States. Its present jurisdiction is final and unappealable, as to the plaintiff, in any case where the amount in controversy is less than three thousand dollars, while the United States may appeal from any adverse judgment. 24 Stat. at L. 505, § 15. The Judicial Code continues this court, and defines its jurisdiction and practice in Chapter 7.

**Circuit Courts of Appeals.** These courts were created by the Act of March 3, 1891, with substantially the same jurisdiction which is described in Chapter 6 of The Judicial Code. 26 Stat. at L. ch. 517.

In the earlier history of these courts, the Circuit Justices frequently availed themselves of the privilege of sitting in the Circuit Courts of Appeals. But with the increasing labors of the Supreme Court the sittings of the Circuit Justices in the Circuit Courts of Appeals grew less and less frequent, until now such a practice is unknown.

**The Reasons for the Enactment of the Judicial Code.** With the discontinuance of the practice of the Circuit Justices in sitting in the Circuit Courts of Appeals of their several Circuits, the labors of the Circuit Judges were correspondingly increased. While during the decade that followed the establishment of the Circuit Courts of Appeals the Circuit Judges sat to a great extent in the Circuit Court, they gradually began to leave the business of that court to the District Judge. There were several reasons for this. The volume of business before the Circuit Courts of Appeals grew steadily, and in those circuits which are largest in territory and population, such as the Second, Seventh, Eighth, and Ninth, the terms of the Appellate Courts became longer, and their sittings were extended to such lengthy periods as to call for exhaustive labor by all the Circuit Judges. This was notably true of the Eighth Circuit. Its court of appeals, with terms at St. Louis, St. Paul, Cheyenne, and Denver, is practically in continuous session the year round. Under such conditions the Circuit Judges were naturally reluctant to disqualify themselves from service in particular cases by sitting in the Circuit Courts. And the bar generally preferring that an Appellate Court should have a stable membership has not been disposed to criticise the growing tendency of the Circuit Judges to confine their labors to that court. The rule that where an Appellate Court fails to agree by an equal division, the judgment or decree of the court below is affirmed, has had no small influence in prompting the Circuit Judges to so guide their work as to provide a full bench for hearings in

the Circuit Courts of Appeals. There might well be considered, also, the fact that no ambitious man (and elevation to the bench should not, even when accompanied by life tenure, extinguish ambition) who is offered the choice of serving on the bench of an inferior or a superior court, could reasonably be expected to select the former.

Consequently the duty of holding Circuit Court has been gradually shifted upon the District Judge. So that of late years, for the most part, the difference in personnel between the circuit and the district court has existed in the clerical departments of those courts. The Commission appointed to revise the Civil Code of Federal Law, referring to an exhibit accompanying its report said:

"It will be seen that during the fiscal year ending June 30, 1901, the Circuit Courts were in session, in the aggregate 11,994 days, and of that number circuit judges were in attendance only 2,335 days. For the rest, premising that both courts commonly sit at the same time and place, we have the incongruity of two courts exercising a jurisdiction concurrent as to some matters and exclusive as to others, with two dockets, two journals, and two clerks, with but a single judge."

These are the prime reasons leading to the enactment of the Judicial Code, in addition to the effort to eliminate obsolete and other superfluous matter now existing in the statutes.

The work of Congress appears to have been admirably accomplished, considering the difficulty of framing an act of this character. The benefits to accrue from the act are largely problematical. It may be doubted whether economy in clerical administration will result from the abolition of the office of Circuit Clerk. Beyond that, the net result of The Judicial Code in its abolition of the Circuit Courts seems to be a change in the entitlement of pleadings.

**The Interpretation of the Judicial Code.** The labors of Congress leading to the enactment of the Judicial Code were materially simplified by the fact that their work was largely confined to re-enactment. That re-enactment, in turn, was of statutory law that, to a very great extent, had received the interpretation of the United States Supreme Court.

In the range of subject matter embraced in the Judicial Code, there are few topics which are not clearly proper subjects of congressional legislation, under well-settled rules.

So that in this connection we shall confine ourselves to a consideration of the general rules by which the interpretation and construction of re-enactments are governed.

The general revision of the Federal Statutes elicited from Mr. Chief Justice Waite the general statement of doctrine which is equally applicable to the Judicial Code; "the re-enacted sections are to be given the same meaning they had in the original statute, unless a contrary intention is plainly manifested." United States v. Le Bris, 121 U. S. 278, 30 L. Ed. 946. The same doctrine has been stated by Mr. Justice Brown. "Congress having in the Revised Statutes adopted the language used in the Act of 1837, must be considered to have adopted also the construction given by this court to this sentence, and made it a part of the enactment." Sessions v. Romadka, 145 U. S. 25, 36 L. Ed. 609. In addition to this principle, statutes are subject to the same rule as contracts, in that they are to be read in their entirety; and when there are a number of statutes relating to the same subject matter, their inter-relation requires that they are all to be considered as a whole, whenever that is necessary to the proper interpretation of either of the parts. Mr. Justice Clifford thus stated the rule: "In the exposition of statutes, the established rule is that the intention of the law-maker is to be deduced from a view of the whole statute, and every material part of the same; and where there are several statutes relating to the same subject, they are all to be taken together, and one part compared with another in the construction of any one of the material provisions, because, in the absence of contradictory or inconsistent provisions, they are supposed to have the same object and as pertaining to the same system. Resort may be had to every part of a statute, or, where there is more than one *in pari materia,* to the whole system, for the purpose of collecting the legislative intention, which is the important inquiry in all cases where provisions are ambiguous or inconsistent. Rules and

maxims of interpretation are ordained as aids in discovering the true intent and meaning of any particular enactment; but the controlling rule of decision in applying the statute in any particular case is, that, whenever the intention of the Legislature can be discovered from the words employed, in view of the subject-matter and the surrounding circumstances, it ought to prevail, unless it lead to absurd and irrational conclusions, which should never be imputed to the Legislature, except when the language employed will admit of no other signification." Kohlsaat v. Murphy, 96 U. S. 153, 24 L. Ed. 844.

# THE JUDICIAL CODE.

[PUBLIC—No. 475.]

[S. 7031.]

An Act To codify, revise, and amend the laws relating to the judiciary.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the laws relating to the judiciary be, and they hereby are, codified, revised, and amended, with title, chapters, head-notes, and sections, entitled, numbered, and to read as follows:

## TITLE.

## THE JUDICIARY.

### CHAPTER ONE.

#### DISTRICT COURTS—ORGANIZATION.


Sec.
1. District courts established; appointment and residence of judges.
2. Salaries of district judges.
3. Clerks.
4 Deputy clerks.
5. Criers and bailiffs.
6. Records; where kept.
7. Effect of altering terms.
8. Trials not discontinued by new term.
9. Court always open as courts of admiralty and equity.
10. Monthly adjournments for trial of criminal causes.
11. Special terms.
12. Adjournment in case of nonattendance of judge.
13. Designation of another judge in case of disability of judge.

Sec.
14. Designation of another judge in case of an accumulation of business.
15. When designation to be made by Chief Justice.
16. New appointment and revocation.
17. Designation of district judge in aid of another judge.
18. When circuit judge may be designated to hold district court.
19. Duty of district and circuit judge in such cases.
20. When district judge is interested or related to parties.
21. When affidavit of personal bias or prejudice of judge is filed.
22. Continuance in case of vacancy in office.
23. District having more than one judge; division of business.

SEC. 1. In each of the districts described in chapter five, there shall be a court called a district court, for which there shall be appointed one judge, to be called a district judge; except that in the northern district of California, the northern district of Illinois, the district of Maryland, the district of Minnesota, the district of Nebraska, the district of New Jersey, the eastern district of New York, the northern and southern districts of Ohio, the district of Oregon, the eastern and western districts of Pennsylvania, and the western district of Washington, there shall be an additional district judge in each, and in the southern district of New York, three additional district judges: *Provided,* That whenever a vacancy shall occur in the office of the district judge for the district of Maryland, senior in commission, such vacancy shall not be filled, and thereafter there shall be but one district judge in said district: *Provided further,* That there shall be one judge for the eastern and western districts of South Carolina, one judge for the eastern and middle districts of Tennessee, and one judge for the northern and southern districts of Mississippi: *Provided further,* That the district judge for the middle district of Alabama shall continue as heretofore to be a district judge for the northern district thereof. Every district judge shall reside in the district or one of the districts for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

See § 551 R. S. U. S., 1 Comp. Stat. p. 446; 4 Fed. Stat. Ann. p. 216.

SEC. 2. Each of the district judges shall receive a salary of six thousand dollars a year, to be paid in monthly installments.

See § 554, R. S. U. S., 1 Comp. Stat., p. 449, 4 Fed. Stat. Ann. p. 217, Pierce, Code § 6985.

SEC. 3. A clerk shall be appointed for each district court by the judge thereof, except in cases otherwise provided for by law.

Re-enactment of § 555, R. S. U. S., Pierce Code, § 6986, 1 Comp. Stat. p. 451, 4 Fed. Stat. Ann. p. 74. The office of clerk is held at the discretion of the court and mandamus cannot be invoked to restore him to office when removed by an order of court. *Ex parte* Hennen, 13 Peters, 230, 261, 10 L. Ed. 138, 154.

SEC. 4. Except as otherwise specially provided by law, the clerk of the district court for each district may, with the approval of the district judge thereof, appoint such number of deputy clerks as may be deemed necessary by such judge, who may be designated to reside and maintain offices at such places of holding court as the judge may determine. Such deputies may be removed at the pleasure of the clerk appointing them, with the concurrence of the district judge. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

See § 558, R. S. U. S., 1 Comp. Stat. p. 452, 4 Fed. Stat. Ann. p. 74, Pierce, Code § 6989.

SEC. 5. The district court for each district may appoint a crier for the court; and the marshal may appoint such number of persons, not exceeding five, as the judge may determine, to wait upon the grand and other juries, and for other necessary purposes.

See § 715, R. S. U. S., 1 Comp. Stat. p. 579, 4 Fed. Stat. Ann. p. 81.

SEC. 6. The records of a district court shall be kept at the place where the court is held. When it is held at more than one place in any district and the place of keeping the records is not specially provided by law, they shall be kept at either of the places of holding the court which may be designated by the district judge.

Re-enactment of § 562 R. S. U. S., Act Sept. 24, 1789, c. 20, § 3, 1 Stat. at L. 73, 1 Comp. Stat. p. 454, 4 Fed. Stat. Ann. p. 218.

SEC. 7. No action, suit, proceeding, or process in any district court shall abate or be rendered invalid by reason of any act changing the time of holding such court, but the same

shall be deemed to be returnable to, pending, and triable in the terms established next after the return day thereof.

Re-enactment of § 573 R. S. U. S., 1 Comp. Stat. p. 475, 4 Fed. Stat. Ann. p. 671. The same provision, as to the circuit courts, repealed by the judicial code, was contained in § 660 R. S. U. S., 1 Comp. Stat. p. 542. See § 297, this Code.

Under § 573 R. S. U. S., a session of the district court in a district where the act of congress provided for a regular term of court, held upon a day other than the one designated in the act, was ruled to be held without authority of law, and its proceedings inoperative and void, as against the forfeiture of a recognizance. McGlashan v. United States, 71 Fed. Rep. 434, 18 C. C. A. 172.

SEC. 8. When the trial or hearing of any cause, civil or criminal, in a district court has been commenced and is in progress before a jury or the court, it shall not be stayed or discontinued by the arrival of the time fixed by law for another session of said court; but the court may proceed therein and bring it to a conclusion in the same manner and with the same effect as if another stated term of the court had not intervened.

See § 746 R. S. U. S., Act March 2, 1855, c. 140 § 1, 10 Stat. at L. 630, 1 Comp. Stat. p. 590, 4 Fed. Stat. Ann. 556.

That the trial "has been commenced and is in progress" at the expiration of the term of court, although but three jurors have been selected, see United States v. Loughery, 13 Blatchf. 267, Fed. Case 15, 631.

SEC. 9. The district courts, as courts of admiralty and as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein. Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court.

Re-enactment of § 574 R. S. U. S., Act August 23, 1842, c. 188, § 5, 5 Stat. at L. 517, 1 Comp. Stat. p. 475, 4 Fed. Stat. Ann. 671.

As to the Circuit Courts, Equity Rule I provided as follows:

The Circuit Courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers and other pleadings; for issuing and returning mesne and final process and commissions; and for making and directing interlocutory motions, orders, rules, and other proceedings, preparatory to hearing of all cases upon their merits.

With the transfer of the jurisdiction of the Circuit Court to the District Court, the equity rule will doubtless be properly amended.

Under § 602, R. S. U. S., which is repealed by § 297 of this code, it has been held that "the existence of a term (of the district court) does not depend on the fact that any business is transacted thereat, nor does any general order of continuance of itself close the term." Mr. Justice Brewer, in McDowell v. United States, 159 U. S. 596, 600, 40 L. Ed. 271, 273.

Under Equity Rule 1 the practice in the circuit courts has been to treat all questions of confirmation of sale as relating to final process, * * * "and as within the jurisdiction of the chancellor to determine at any time, irrespective of whether a stated term of the circuit court be in session." Pardee, J., in Central Trust Co. v. Sheffield & Birmingham Coal, I. & R. Co., 60 Fed. Rep. 9, 15.

Under § 574, R. S. U. S., it has been held that "the circuit and district court are * * * actually in session * * * when the court is opened by the judge for business, or business is actually transacted in court." Baker, J., in Butler v. United States, 87 Fed. Rep. 655, 659.

SEC. 10. District courts shall hold monthly adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases.

Re-enactment of § 578, R. S. U. S., Act August 23, 1842, c. 188, § 3, 5 Stat. at L. 517, 1 Comp. Stat. p. 476, 4 Fed. Stat. Ann. p. 672.

SEC. 11. A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. Any business may be transacted at such special term which might be transacted at a regular term.

Re-enactment of § 581 R. S. U. S., 1 Comp. Stat. p. 477, 4 Fed. Stat. Ann. p. 672.

SEC. 12. If the judge of any district court is unable to attend at the commencement of any regular, adjourned, or special term, or any time during such term, the court may be adjourned by the marshal, or clerk, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct.

Re-enactment of § 583 R. S. U. S. 1 Comp. Stat. p. 478, 4 Fed. Stat. Ann. p. 673.

The word "term" as used in this section has been thus defined by Judge Carpenter. "In literal meaning, and the earliest use of the word, it signifies a definite period of time, during which the court remains in continuous session. There is, however, nothing here implied which will exclude a session consisting of a single day. The term is that session of the court which begins at a time fixed by or under authority of law, and, having proceeded continuously, ends when the business then under consideration is concluded." Pitnam v. United States, 45 Fed. Rep. 159, 160. Affirmed in United States v. Pitnam, 147 U. S. 669, 37 L. Ed. 324.

SEC. 13. When any district judge is prevented, by any disability, from holding any stated or appointed term of his district court, and that fact is made to appear by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, any such circuit judge or justice may, if in his judgment the public interests so require, designate and appoint the judge of any other district in the same circuit to hold said court, and to discharge all the judicial duties of the judge so disabled, during such disability. Whenever it shall be certified by any such circuit judge or, in his absence, by the circuit justice of the circuit in which the district lies, that for any sufficient reason it is impracticable to designate and appoint a judge of another district within the circuit to perform the duties of such disabled judge, the chief justice may, if in his judgment the public interests so require, designate and appoint the judge of any district in another circuit to hold said court and to discharge all the judicial duties of the judge so disabled, during such disability. Such appointment shall be filed in the clerk's office, and entered on the minutes of the said district court, and a certified copy

thereof, under the seal of the court, shall be transmitted by the clerk to the judge so designated and appointed.

See § 591, R. S. U. S., 1 Comp. Stat. p. 480, 4 Fed. Stat. Ann. p. 675.

The failure to file the appointment in the clerk's office does not affect the authority of the appointed judge. National Home for Soldiers v. Butler, 33 Fed. Rep. 374.

It was held that under this section the power of designation to hold court in case of disability did not extend to the case of a vacancy (9 Ops. Atty. Gen. 131) and that opinion was embodied in § 603, R. S. U. S., but where a judge was appointed to hold court in case of disability, and, the disabled judge dying after the appointment, continued to hold court, it was held that the appointee was judge *de facto,* if not *de jure,* and his acts as such were held not to be open to collateral attack. Ball v. United States, 140 U. S. 118, 35 L. Ed. 377; Norton v. Shelby County, 118 U. S. 425, 30 L. Ed. 178; Manning v. Weeks, 139 U. S. 504, 35 L. Ed. 624.

SEC. 14. When, from the accumulation or urgency of business in any district court, the public interests require the designation and appointment hereinafter provided, and the fact is made to appear, by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may designate and appoint the judge of any other district in the same circuit to have and exercise within the district first named the same powers that are vested in the judge thereof. Each of the said district judges may, in case of such appointment, hold separately at the same time a district court in such district, and discharge all the judicial duties of the district judge therein.

See § 592 R. S. U. S., 1 Comp. Stat. p. 481, 4 Fed. Stat. Ann. p. 676.

SEC. 15. If all the circuit judges and the circuit justice are absent from the circuit, or are unable to execute the provisions of either of the two preceding sections, or if the district judge so designated is disabled or neglects to hold the court and transact the business for which he is designated, the clerk of the district court shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint in the manner aforesaid the judge of any district within

such circuit or within any other circuit; and said appointment shall be transmitted to the clerk and be acted upon by him as directed in the preceding section.

See § 593 R. S. U. S., 1 Comp. Stat. 481, 4 Fed. Stat. Ann. p. 676.

SEC. 16. Any such circuit judge, or circuit justice, or the Chief Justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge, in the manner, for the duties, and with the powers mentioned in the three preceding sections, and revoke any previous designation and appointment.

See § 594 R. S. U. S. 1 Comp. Stat. p. 481, 4 Fed. Stat. Ann. p. 676.

SEC. 17. It shall be the duty of the senior circuit judge then present in the circuit, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section fourteen, the district judge of any judicial district within his circuit to hold a district court in the place or in aid of any other district judge within the same circuit.

See § 596 R. S. U. S., 1 Comp. Stat. p. 482, 4 Fed. Stat. Ann. 677.

SEC. 18. Whenever, in the judgment of the senior circuit judge of the circuit in which the district lies, or of the circuit justice assigned to such circuit, or of the Chief Justice, the public interest shall require, the said judge, or associate justice, or Chief Justice, shall designate and appoint any circuit judge of the circuit to hold said district court.

New section.

SEC. 19. It shall be the duty of the district or circuit judge who is designated and appointed under either of the six preceding sections, to discharge all the judicial duties for which he is so appointed, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district.

See § 595 R. S. U. S., 1 Comp. Stat. p. 482, 4 Fed. Stat. Ann. p. 676.

SEC. 20. Whenever it appears that the judge of any dis-

trict court is in any way concerned in interest in any suit pending therein, or has been of counsel or is a material witness for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and also an order that an authenticated copy thereof shall be forthwith certified to the senior circuit judge for said circuit then present in the circuit; and thereupon such proceedings shall be had as are provided in section fourteen.

See § 601 R. S. U. S. 1 Comp. Stat. p. 484, 4 Fed. Stat. Ann. p. 678. The fact that the judge was plaintiff in a pending suit in a State Court against a defendant corporation, and that one of the parties was his son-in-law did not disqualify him from making administrative orders in the cause; his decision to so act being within his discretion, and not the subject of error. Coltrane v. Templeton, 106 Fed. Rep. 370, 377, 45 C. C. A. 328. If the facts are known to the party recusing, his objection will be taken as being waived if he fails to make it before issues are joined and the trial commenced. Ibid. The fact that the district judge is a tax payer of a county does not give him such relation to the county as to disqualify him from sitting in a suit involving the validity of the bonds of the county. Wade v. Travis County, 72 Fed. Rep. 985. Disqualification by relationship defined in a State statute renders it improper for a district judge to act, even by consent of the parties. In re Eatonton Elec. Co., 120 Fed. Rep. 1010.

SEC. 21. Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated in the manner prescribed in the section last preceding, or chosen in the manner prescribed in section twenty-three, to hear such matter. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists and shall be filed not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time. No party shall be entitled in any case to file more than one such affidavit; and no such

affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the court a certificate that he deems himself unable for any reason to preside with absolute impartiality in the pending suit or action.

New section.

SEC. 22. When the office of judge of any district court becomes vacant, all process, pleadings, and proceedings pending before such court shall, if necessary, be continued by the clerk thereof until such times as a judge shall be appointed, or designated to hold such court; and the judge so designated, while holding such court, shall possess the powers conferred by, and be subject to the provisions contained in section nineteen.

Similar to § 602 R. S. U. S., 1 Comp. Stat. p. 484; whose operation was automatic, providing that

"§ 602. When the office of judge of any district court is vacant, all process, pleadings, and proceedings pending before such court shall be continued of course until the next stated term after the appointment and qualification of his successor; except when such first-mentioned term is held as provided in the next section." 4 Fed. Stat. Ann. p. 679.

This statute was held to apply to both civil and criminal causes; to be a remedial statute and entitled to liberal construction "The general purpose of § 602 is plain. It is that the administration of justice by a district court shall not, through a vacancy in the office of judge, be defeated or unduly impeded; that causes, civil and criminal, shall, notwithstanding the vacancy, be preserved in their full force and vitality, to be effectively proceeded in where there is a judge authorized to discharge the functions of the court; that all acts and steps, calling for or serving as the basis of judicial action, which otherwise must or should earlier be done or taken in court in the progress of a case, shall or may be done or taken therein after the termination of the vacancy." Bradford, J., in United States v. Murphy, 82 Fed. Rep. 893, 899. "'Process pending before' must be held to include process * * * of which the object has not been fully accomplished,—process which is still *in fieri*,—process, which if continued in force, will result either in securing the appearance of the accused to meet the demands of justice or in fastening upon the recognizors liability for his default. Imprisonment under a

commitment by a commissioner to answer a criminal charge clearly is process within the meaning of the section. It is only a means of compelling appearance in court." Ibid.

SEC. 23. In districts having more than one district judge, the judges may agree upon the division of business and assignment of cases for trial in said district; but in case they do not so agree, the senior circuit judge of the circuit in which the district lies, shall make all necessary orders for the division of business and the assignment of cases for trial in said district.

## CHAPTER TWO.

### DISTRICT COURTS—JURISDICTION.


Sec.
24. Original jurisdiction.
Par. 1. Where the United States are plaintiffs; and of civil suits at common law or in equity.
2. Of crimes and offenses.
3. Of admiralty causes, seizures, and prizes.
4. Of suits under any law relating to the slave trade.
5. Of cases under internal revenue, customs, and tonnage laws.
6. Of suits under postal laws.
7. Of suits under the patent, the copyright, and the trade-mark laws.
8. Of suits for violation of interstate commerce laws.
9. Of penalties and forfeitures.
10. Of suits on debentures.
11. Of suits for injuries on account of acts done under laws of the United States.
12. Of suits concerning civil rights.
13. Of suits against persons having knowledge of conspiracy, etc.
14. Of suits to redress the deprivation, under color of law, of civil rights.

Sec.
24. Original jurisdiction—Continued.
Par. 15. Of suits to recover certain offices.
16. Of suits against national-banking associations.
17. Of suits by aliens for torts.
18. Of suits against consuls and vice-consuls.
19. Of suits and proceedings in bankruptcy.
20. Of suits against the United States.
21. Of suits for the unlawful inclosure of public lands.
22. Of suits under immigration and contract-labor laws.
23. Of suits against trusts, monopolies, and unlawful combinations.
24. Of suits concerning allotments of land to Indians.
25. Of partition suits where United States is joint tenant.
25. Appellate jurisdiction under Chinese-exclusion laws.
26. Appellate jurisdiction over Yellowstone National Park.
27. Jurisdiction of crimes on Indian reservations in South Dakota.


SEC. 24. The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof

authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens, or subjects. No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made: *Provided, however,* That the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section.

Second. Of all crimes and offenses cognizable under the authority of the United States.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

Fourth. Of all suits arising under any law relating to the slave trade.

Fifth. Of all cases arising under any law providing for internal revenue, or from revenue from imports or tonnage, except those cases arising under any law providing revenue from imports, jurisdiction of which has been conferred upon the Court of Customs Appeals.

Sixth. Of all cases arising under the postal laws.

Seventh. Of all suits at law or in equity arising under the patent, the copyright, and the trade-mark laws.

Eighth. Of all suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the Commerce Court.

Ninth. Of all suits and proceedings for the enforcement of penalties and forefeitures incurred under any law of the United States.

Tenth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture.

Eleventh. Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States, for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several States.

Twelfth. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty, Revised Statutes.

Thirteenth. Of all suits authorized by law to be brought against any person who, having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty, Revised Statutes, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act.

Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

Fifteenth. Of all suits to recover possession of any office, except that of elector of President or Vice President, Representative in or Delegate to Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided,* That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the States.

Sixteenth. Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title "National Banks," Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located.

Seventeenth. Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States.

Eighteenth. Of all suits against consuls and vice consuls.

Nineteenth. Of all matters and proceedings in bankruptcy.

Twentieth. Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the

party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided, however,* That nothing in this paragraph shall be construed as giving to either the district courts or the Court of Claims jurisdiction to hear and determine claims growing out of the late Civil War, and commonly known as "war claims," or to hear and determine other claims which had been rejected or reported on adversely prior to the third day of March, eighteen hundred and eighty-seven, by any court, department, or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the twenty-seventh day of June, eighteen hundred and ninety-eight, shall abate or be affected by this provision: *And provided further,* That no suit against the Government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought and tried under the provisions of this paragraph shall be tried by the court without a jury.

Twenty-first. Of proceedings in equity, by writ of injunction, to restrain violations of the provisions of laws of the

United States to prevent the unlawful inclosure of public lands; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure.

Twenty-second. Of all suits and proceedings arising under any law regulating the immigration of aliens, or under the contract labor laws.

Twenty-third. Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies.

Twenty-fourth. Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty.

Twenty-fifth. Of suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants in common or joint tenants, such suits to be brought in the district in which such land is situate.

OF THE JURISDICTION CONFERRED BY THIS SECTION. In view of the scope of jurisdiction conferred upon the District Courts by the twenty-five paragraphs of this section, a brief reference to the constitutional provision upon which that jurisdiction must be based is appropriate.

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states,—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects." (Article III, § 2.)

This section fixes the limits of the jurisdiction which may be conferred upon the Federal Courts by Congressional legislation.

JURISDICTION DEFINED. "Jurisdiction is the power to hear and determine the subject-matter in controversy between parties to a suit, to

adjudicate or exercise any judicial power over them." Clark, J., in Nashville, *C. & St. L. Ry. v. Taylor,* 86 Fed. Rep. 168, 171.

TWO CLASSES OF FEDERAL JURISDICTION. From the beginning of the exercise of jurisdiction by the Federal Courts under the Constitution the distinction between the two classes of civil proceedings cognizable by those courts has been clearly drawn. In the first class, jurisdiction is dependent upon the character of the parties; in the second class, upon the subject-matter or character of the suit. With reference to this division the Supreme Court has said:

"In one description of cases the jurisdiction of the court is founded entirely on the character of the parties, and the nature of the controversy is not contemplated by the constitution. The character of the parties is everything, the nature of the cases nothing. In the other description of cases the jurisdiction is founded entirely on the character of the case, and the parties are not contemplated by the constitution. In these the nature of the case is everything, the character of the parties nothing." Mr. Chief Justice Marshall, in Cohens v. Virginia, 6 Wheat. 264, 393, 5 L. Ed. 257, 393.

"CASES" AND "CONTROVERSIES" DEFINED. Article III, § 2, employs the word cases three times, and the word controversies twice. They have been jointly defined as embracing "the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights, or the prevention, redress, or punishment of wrongs." Smith v. Adams, 130 U. S. 167, 173, 32 L. Ed. 895, 897; LaAbra Silver Mining Co. v. United States, 175 U. S. 423, 456, 44 L. Ed. 223, 235.

Judge Deady, however, has endeavored to distinguish between the words "cases" and "controversies," as follows:

"The change in the language of this section from the use of the term 'cases' to 'controversies' is apparently deliberate and premeditated; and, in the case of an instrument so carefully prepared and considered as the constitution of the United States, cannot be regarded as fortuitous, or without special significance. In my judgment, it was intended by the use of the terms 'cases' and 'controversies' to distinguish between an ordinary action or suit, which may include many parties plaintiff or defendant, and involve the examination and consideration of more than one item of disputed controversy, and so much or such part of such proceeding as may only constitute a controversy between two or more of said parties, who are citizens of different states. There may be a controversy in a case which is less than the whole of it." Fisk v. Henarie, 32 Fed. Rep. 417, 423.

Mr. Justice Field, on circuit, said "the term 'controversies', if distinguishable at all from 'cases', is so in that it is less comprehensive than the latter, and includes only suits of a civil nature." In re Pacific Ry. Commission, 32 Fed. Rep. 241, 255. It is possibly with this suggested distinction in view, that Mr. Chief Justice Fuller said;

"The use of the word 'controversies' as in contradistinction to the word 'cases', and the omission of the word 'all' in respect of controversies, left it to Congress to define the controversies over which the courts it was empowered to ordain and establish might exercise jurisdiction, and the manner in which it was to be done." Stevenson v. Fain, 195 U. S. 165, 167, 49 L. Ed. 142.

**Jurisdiction of * * * suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue.**

The United States Supreme Court, referring to Hans v. Louisiana, 134 U. S. 1, 13, 15, 33 L. Ed. 847, has said, "That case, and others in this court relating to the suability of states, proceeded upon the broad ground that 'it is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent.'

"The question as to the suability of one government by another government rests upon wholly different grounds. Texas is not called to the bar of this court at the suit of an individual, but at the suit of the government established for the common and equal benefit of the people of all the states. The submission to judicial solution of controversies arising between these two governments, 'each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other.' (M'Culloch v. Maryland, 17 U. S. (4 Wheat.) 316, 4 L. Ed. 579, 600, 602), but both subject to the supreme law of the land, does no violence to the inherent nature of sovereignty. The states of the Union have agreed, in the Constitution, that the judicial power of the United States shall extend to *all* cases arising under the Constitution, laws and treaties of the United States, without regard to the character of the parties (excluding, of course, suits against a State by its own citizens or by citizens of other states, or by citizens or subjects of foreign states), and equally to controversies to which the United States shall be a party, without regard to the subject of such controversies, and that this court may exercise original jurisdiction in all such cases, 'in which a State shall be party,' without excluding those in which the United States may be the opposite party. The exercise, therefore, by this court, of such original jurisdiction in a suit brought by one State against another to determine

the boundary line between them, or in a suit brought by the United States against a State to determine the boundary between a Territory of the United States and that State, so far from infringing, in either case, upon the sovereignty, is with the consent of the State sued. Such consent was given by Texas when admitted into the Union upon an equal footing in all respects with the other states.

"We are of opinion that this court has jurisdiction to determine the disputed question of boundary between the United States and Texas." Mr. Justice Harlan, in United States v. Texas, 143 U. S. 621, 36 L. Ed. 285, 293.

### "Suits" defined.

"The term suit is certainly a very comprehensive one, and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords. The modes of proceeding may be various; but, if a right is litigated in a court of justice the proceeding by which the decision of the court is sought is a suit." Mr. Chief Justice Marshall, in Weston v. Charleston, 2 Peters 449, 464, 7 L. Ed. 481, 486.

### "Of a civil nature."

The distinction drawn by these words relates to the division between civil actions on the one hand and penal actions on the other. The classification of the action depends upon its real nature, and not upon its form; and the fact that the statute of a State declares a suit to enforce a penal statute of that state to be a civil action is immaterial. Indiana v. Alleghany Oil Co. 85 Fed. Rep. 870, 873. "The only cases in which the courts of the United States have entertained jurisdiction over suits by a foreign state have been suits to enforce demands of a strictly civil nature." Ibid, and State v. Chicago B. & Q. R. Co., 37 Fed. Rep. 497; Ferguson v. Ross, 38 Fed. Rep. 161; United States v. Mexican Natl. Co., 40 Fed. Rep. 769; State v. Day Land & Cattle Co., 41 Fed Rep. 228; Dey v. Chicago, M. & St. P. R. Co., 45 Fed. Rep. 82; Georgia v. Brailsford, 2 Dall. 402, 1 L. Ed. 433; Wisconsin v. Pelican Ins. Co., 127 U. S. 265, 32 L. Ed. 239. A suit may be "of a civil nature" although a criminal proceeding in form. Illinois v. Illinois Central R. Co., 33 Fed. Rep. 721.

### "At common law or in equity."

"This expression has been held to mean * * * all suits in which legal rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized and equitable remedies administered, and to admiralty proceedings, and not merely suits

which the common law recognized among its old and settled proceedings. * * * An action at common law may be founded upon a statute." Wheeler, J., in Keith v. Town of Rockingham, 2 Fed. Rep. 834. To the same effect see Brisenden v. Chamberlain, 53 Fed. Rep. 307, 309. Proceedings to establish a will do not come within the meaning of this clause. Wahl v. Franz, 100 Fed. Rep. 680, 40 C. C. A. 638. Proceedings in eminent domain are civil suits at common law for the purposes of this section. Kohl v. United States, 91 U. S. 367, 23 L. Ed. 449. Mandamus proceedings do not come within the scope of this section. Indiana v. Lake Erie & W. R. Co., 85 Fed. Rep. 1. Such proceedings are outside Federal jurisdiction even when presented in the form of a Bill in Equity. Smith v. Bourbon County, 127 U. S. 105, 32 L. Ed. 73. Garnishment proceedings do not fall within this clause. Central Trust Co. v. East Tennessee, V. & G. R. Co., 59 Fed. Rep. 523.

"Claiming land under grants from different states."

The scope of jurisdiction under this clause has been held to extend to all cases founded upon conflicting grants of different states. Colson v. Lewis, 2 Wheat. 377, 4 L. Ed. 266.

"Where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars."

See Act of March 3, 1875, ch. 137, § 1, 18 Stat. at L. 470; as amended, 25 Stat. at L. 434; 4 Fed. Stat. Ann. 265. The limitation as to the amount in controversy applies only to those cases where the essential nature of the subject matter of the litigation (such as patents or copyrights) does not of itself confer federal jurisdiction. "It is clear that a circuit (now district) court cannot under that statute take original cognizance of a case arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or of a controversy between citizens of different states, or of a controversy between citizens of a state and foreign states, citizens, or subjects, unless the sum in dispute, exclusive of interest and costs, exceeds $2,000 (now $3,000), because in immediate connection with the enumeration of each of such cases will be found expressed a limitation of that character in respect of the sum or value necessary to give jurisdiction. But that cannot be said of the reference in the statute to a controversy in which the United States are plaintiffs, or petitioners, or to one between citizens of the same state claiming lands under grants of different states. The clause referring to cases or controversies of the two kinds last mentioned was placed between clauses that specifically refer to the value of the matter in dispute; so that it may be reasonably inferred that Congress

intended that a Circuit Court should take cognizance of a controversy in which the United States are plaintiffs or petitioners or of a controversy between citizens of the same state claiming lands under grants of different states without regard to the amount involved." United States v. Seyward, 160 U. S. 493, 497, 40 L. Ed. 508, 509. In suits for trademark infringement the amount in controversy is the value of the trademark. Symonds v. Greene, 28 Fed. Rep. 834; Hennessy v. Herrmann, 89 Fed. Rep. 669; Hopkins on Trademarks (2d Ed.) 460. "Matter in controversy", is the exact equivalent for the expression "Amount in Controversy" (Blackburn v. Portland Gold Mining Co., 175 U. S. 571, 44 L. Ed. 276) or the term "Matter in dispute", as the latter is used by Mr. Justice Field in the opinion of the Supreme Court from which the following excerpt is taken; "By matter in dispute is meant the subject of litigation, the matter upon which the action is brought and issue is joined, and in relation to which, if the issue be one of fact, testimony is taken. It is conceded that the pecuniary value of the matter in dispute may be determined, not only by the money judgment prayed, where such is the case, but in some cases by the increased or diminished value of the property directly affected by the relief prayed, or by the pecuniary result to one of the parties immediately from the judgment. Thus a suit to quiet the title to parcels of real property, or to remove a cloud therefrom, by which their use and enjoyment by the owner are impaired, is brought within the cognizance of the court, under the statute, only by the value of the property affected." Smith v. Adams, 130 U. S. 167, 32 L. Ed. 895, 898. "In determining from the face of a pleading whether the amount really in dispute is sufficient to confer jurisdiction upon a court of the United States, it is settled that if from the nature of the case as stated in the pleadings there could not legally be a judgment for an amount necessary to the jurisdiction, jurisdiction cannot attach even though the damages be laid in the declaration at a larger sum." Vance v. W. A. Vandercook Co., 170 U. S. 468, 472, 42 L. Ed. 1111, 1113. Where the jurisdiction is dependent upon the diverse citizenship of the parties, the limitation as to the amount in controversy is rigorously insisted upon, and must exceed the amount fixed by the statute, exclusive of accrued interest. Moore v. Town of Edgefield, 32 Fed. Rep. 498. The amount may be built up of distinct demands of less amounts, and those demands may have been acquired by assignment, without defeating the jurisdiction of the Federal Court. "When the plaintiffs had acquired, in good faith, from citizens of states other than the state of which the defendants were citizens, claims amounting in the aggregate to $2,000 (now $3,000), they had a right to sue the defendants on all

of such claims in one action in the circuit court, although no one of the claims amounted to $2,000. The requisite amount and citizenship necessary to confer the jurisdiction are united in the plaintiffs; and the jurisdiction is not affected by the fact that the several assignors of the claims could not have maintained separate suits, because the claim of each was less than $2,000 in amount." Bowden v. Burnham, 59 Fed. Rep. 752, 755, 8 C. C. A. 248. Jurisdiction cannot be secured by uniting in a single suit separable claims against the various defendants, or uniting the several interests of two or more plaintiffs. The Supreme Court has said, "It is well settled in this court that when two or more plaintiffs, having several interests, unite for the convenience of litigation in a single suit, it can only be sustained in the court of original jurisdiction, or on appeal in this court, as to those whose claims exceed the jurisdictional amount; and that when two or more defendants are sued by the same plaintiff in one suit the test of jurisdiction is the joint or several character of the liability to the plaintiff." Walter v. Northeastern R. Co. 147 U. S. 370, 373, 37 L. Ed. 206, 208. *On appeal,* if the appeal is taken by the plaintiff the amount in controversy is the amount of his claim; if the appeal is taken by the defendant the amount in controversy is taken to be the amount of the judgment against him. Sampson v. Welsh, 24 How. 207, 16 L. Ed. 632; Sheldon v. Clifton, 23 How. 481, 16 L. Ed. 429; United States v. Watkinds, 6 Fed. Rep. 152, 156; Walker v. United States, 4 Wall. 163, 18 L. Ed. 319. Where the suit is brought for an amount exceeding that required to give jurisdiction, the jurisdiction nevertheless will be defeated if the plaintiff's evidence shows that the amount in controversy is actually below the required minimum. Cabot v. McMaster, 65 Fed. Rep. 533, 13 C. C. A. 39; United States Express Co. v. Poe, 61 Fed. Rep. 475. The demand of a money judgment in excess of the jurisdictional amount is sufficient as an allegation of the value of the matter in dispute, "unless, from the facts stated in the complaint, it appears that even if (the plaintiff) should prevail as a matter of law, he could not recover the jurisdictional amount." Holden v. Utah & M. Mach. Co., 82 Fed. Rep. 209. Where the record failed to disclose the value of the matter in dispute, the Supreme Court, where its jurisdiction depended upon such value, has approved the practice of establishing the value by affidavit. Wilson v. Blair, 119 U. S. 387, 30 L. Ed. 441; Street v. Ferry, 119 U. S. 385, 30 L. Ed. 439. But this practice has been held not to apply to a case where the complaint upon its face shows a matter in dispute exceeding in value the necessary amount. Holden v. Utah & M. Mach. Co., 82 Fed. Rep. 209, 211.

## Suits arising under the Constitution.

Among the questions which have been held to bring cases within the scope of this provision are those of impairing the obligation of a contract (Capital City Gas Co. v. Des Moines, 72 Fed. Rep. 818; Leonard v. Shreveport, 28 Fed. Rep. 257), depriving a person of his liberty without due process of law (Cox v. Gilmer, 88 Fed. Rep. 343), and deprivation of property without due process of law, by means of State legislation (Crystal Springs Land & Water Co. v. Los Angeles, 76 Fed. 148); but where the alleged deprivation of property is without authority of legislation, no federal question is presented. Barney v. New York, 193 U. S. 430, 48 L. Ed. 737; Huntington v. New York, 193 U. S. 441, 48 L. Ed. 741.

## Suits under the laws of the United States.

The fact that a party to the action is a corporation created by the laws of the United States, confers jurisdiction under this provision. Washington & Idaho R. Co. v. Cœur d'Alene R. & N. Co., 160 U. S. 77, 93, 40 L. Ed. 346, 352. A suit between the citizens of the same State to enjoin the erection of a bridge over navigable waters is within the jurisdiction conferred by this provision. Miller v. Mayor of New York, 109 U. S. 385, 27 L. Ed. 971. The provision includes, as arising under the laws of the United States, suits by or against receivers of National Banks (Bartley v. Hayden, 74 Fed. Rep. 913; Armstrong v. Trautman, 36 Fed. Rep. 275), suits against officers and directors of National Banks (Bailey v. Mosher, 63 Fed. Rep. 488, 11 C. C. A. 304), suits upon bonds for the faithful performance of duties, given by the officers of National Banks (Walker v. Windsor Nat. Bank, 56 Fed. Rep. 76, 5 C. C. A. 421), suits upon bonds taken in the course of litigation in the federal courts (Files v. Davis, 118 Fed. Rep. 465; Meyers v. Block, 120 U. S. 206, 30 L. Ed. 642; Tullock v. Mulvane, 184 U. S. 497, 46 L. Ed. 673; Missouri K. & T. R. Co. v. Elliott, 184 U. S. 530, 46 L. Ed. 673), an action on a bond for the execution of a Government contract (Mullin v. United States, 109 Fed. Rep. 817, 48 C. C. A. 677), suits under the patent laws, or for the infringement of letters patent (Dunham v. Bent, 72 Fed. Rep. 60; Bernardin v. Northall, 77 Fed. Rep. 849), under the copyright laws (Daly v. Brady, 69 Fed. Rep. 285), and suits for the infringement of trademarks registered under the acts of Congress (see Act of February 20, 1905, § 17, 33 Stat. at L. 728; Ryder v. Holt, 128 U. S. 525, 32 L. Ed. 529; Hopkins on Trademarks (2d Ed.), p. 460).

"Treaties" defined.

"A treaty is in its nature a contract between two nations, not a Legislative Act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infraterritorial; but is carried into execution by the sovereign power of the respective parties to the instrument." Mr. Chief Justice Marshall, in Foster v. Neilson, 2 Peters 253, 314, 7 L. Ed. 415, 435. A law passed in contravention of a treaty is void. Society v. New Haven, 8 Wheat. 464, 493, 5 L. Ed. 662, 669. A suit involving the determination of what rights became vested under Land Grants which were confirmed by treaty does not involve a question under the treaty. Crystal Springs Land & Water Co. v. Los Angeles, 82 Fed. Rep. 114.

Citizens of different States.

A State is not a citizen. Postal Cable Co. v. Alabama, 155 U. S. 482, 39 L. Ed. 231. Corporations are "citizens" within the meaning of the Act. Barrow Steam Ship Co. v. Kane, 170 U. S. 103, 42 L. Ed. 966. They are also included in the term "aliens." Ibid. Citizens of the District of Columbia or of the Territories are not citizens of a state within the meaning of this section. Hooe v. Jamieson, 166 U. S. 395, 41 L. Ed. 1049. "Persons may be citizens of the United States without being citizens of any state. Citizenship, in relation to the federal judiciary, must be of that kind which identifies the party with some particular state of which he is a member. To constitute citizenship of a state in relation to the judiciary acts requires—First, residence within such state; and, second, an intention that such residence shall be permanent. In this sense, state citizenship means the same thing as domicile in its general acceptation. The act of residence does not alone constitute the domicile of a party, but it is the fact of residence, accompanied by an intention of remaining, which constitutes domicile. The distinction between domicile and mere residence may be shortly put as that between residence *animo manendi* and residence *animo revertendi*. Mere residence may be for a transient purpose, as for business, for a fixed period, or limited by an expected future event, upon the happening of which there is a purpose to return or remove. The two elements of residence, and the intention that such residence shall be permanent, must concur to make citizenship. It has consequently been held from the beginning that an averment of residence is not the equivalent of an averment of citizenship for the purpose of supporting jurisdiction in the courts of the United States." Clark, J., in Marks v. Marks, 75 Fed. Rep. 321, 324.

Suit by assignees.

This provision is substantially the same as § 1 of the Act of August 13, 1888, 25 Stat. At L. p. 433, of which Judge Caldwell has said: "The prior acts of congress regulating the jurisdiction of the circuit court contained substantially the same provision, and it has been the uniform holding in the circuits that the clause of the section we have quoted has relation to the citizenship of the assignor, and not to the amount of the note or other chose in action assigned. The essential requirement of this clause of the statute is satisfied when the citizenship of the assignor is such that he could have maintained a suit against the debtor in the circuit court." Bowden v. Burnham, 59 Fed. Rep. 752, 755, 8 C. C. A. 248. The manifest intention of this provision is to prevent assignments of choses in action for the mere purpose of securing jurisdiction in the Federal court (Barclay v. Levee Commissioners, 1 Woods 254, Fed. Case 977), and to relieve the Federal court from the burden of entertaining controversies purely local in character, as well as to avoid the impairment to the defendant of whatever defenses and set-offs he might be entitled to make in the State courts (Clarke v. Janesville, 1 Biss. 98, Fed. Case 2,854). In a suit brought by an assignee, he must show that it could have been prosecuted in the Federal court by his assignor. Holmes v. Goldsmith, 147 U. S. 150, 37 L. Ed. 118. In New Orleans v. Quinlan, 173 U. S. 191, 193, 43 L. Ed. 664, the Supreme Court has approved the following construction of this provision: "The circuit court shall have no jurisdiction over suits for the recovery of the contents of promissory notes or other choses in action brought in favor of assignees or transferees except over—First, suits upon foreign bills of exchange; second, suits that might have been prosecuted in such court to recover the said contents if no assignment or transfer had been made; third, suits upon choses in action payable to bearer and made by a corporation." Newgass v. New Orleans, 33 Fed. Rep. 196. A bill of exchange drawn in one state and made payable in another is a "foreign" bill of exchange within the meaning of this section. Buckner v. Finley, 2 Peters 586, 7 L. Ed. 528. For a discussion of checks as bills of exchange see Bull v. First National Bank, 123 U. S. 105, 31 L. Ed. 97. This provision, as contained in § 629, R. S. U. S., read: "No circuit court shall have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange." Of that section Mr. Justice Field said: "The terms used, 'the contents of any promissory note or other chose in action,' were designed to embrace the rights the instrument conferred which were capable of enforcement by suit. They were not hap-

pily chosen to convey this meaning, but they have received a construction substantially to that purport in repeated decisions of this court." Shoecraft v. Bloxham, 124 U. S. 730, 31 L. Ed. 574. "The assignee in a chose in action may maintain a suit in the Federal court to recover possession of the specific thing, or damages for its wrongful caption or detention though the court would have no jurisdiction of the suit if brought by the assignors." Bushnell v. Kennedy, 76 U. S. (9 Wall.) 387, 19 L. Ed. 736.

2. All crimes and offenses cognizable under the authority of the United States.

See § 563, R. S. U. S. 4 Fed. Stat. Ann. p. 218, 1 Comp. Stat. 455; Pierce Code § 7017. "A crime is 'cognizable under the authority of the United States' when it is triable in its courts by virtue of its laws. It is long since settled that the courts of the Unied States have no common-law jurisdiction in criminal cases; that, so far as the United States are concerned, there are no common-law crimes; and that therefore its courts cannot take cognizance of any act or omission as a crime unless it has been made such by an act of congress." Deady, J., in United States v. Lewis, 36 Fed. Rep. 449.

3. All civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

See § 563, R. S. U. S. 8th Cl. 4 Fed. Stat. Ann. p. 220, 1 Comp. Stat. p. 456; Pierce Code § 7017. As to the scope of the admiralty jurisdiction of the Federal courts Mr. Justice Brown has said: "The true distinction between such proceedings as are and such as are not invasions of the exclusive admiralty jurisdiction is this: If the cause of action be one cognizable in admiralty, and the suit be *in rem* against the thing itself, though a motion be also issued to the owner, the proceeding is essentially one in admiralty. If, upon the other hand, the cause of action be not one of which a court of admiralty has jurisdiction, or if the suit be *in personam* against an individual defendant, with an auxiliary attachment against a particular thing, or against the property of the defendant in general, it is essentially a proceeding according to the course of the common law, and within the saving clause of the statute (§ 563) of a

common-law remedy. The suit in this case being one in equity to enforce a common-law remedy, the state courts were correct in assuming jurisdiction." Knapp, Stout & Co. v. McCaffrey, 177 U. S. 638, 648, 44 L Ed. 921, 926. "State Courts have no jurisdiction in admiralty cases, nor can courts within the States exercise such jurisdiction, except such as are established in pursuance of the 3d Article of the Constitution. * * * Our Constitution, in its operation, is co-extensive with our political jurisdiction and, wherever navigable waters exist within the limits of the United States, it is competent for Congress to make provision for the exercise of admiralty jurisdiction, either within or outside of the States; and in organizing Territories Congress may establish tribunals for the exercise of such jurisdiction, or they may leave it to the Legislature of the Territory to create such tribunals." The City of Panama v. Phelps, 101 U. S. 453, 25 L. Ed. 1061. The admiralty jurisdiction of the Federal courts extends to such cases as arise in the course of navigation and commerce upon the high seas (De Lovio v. Boit, 2 Gall. 398, Fed. Case 3776), the Great Lakes (Genessee Chief v. Fitzhugh, 12 Howard 443, 13 L. Ed. 1058), the navigable rivers (*Ex parte* Garnet, 141 U. S. 1, 35 L. Ed. 631), and the canals (*Ex parte* Boyer, 109 U. S. 629, 27 L. Ed. 1056; Malony v. City of Milwaukee, 1 Fed. Rep. 611).

## Seizures.

Seizure is the taking possession of property for the purpose of submitting to proper judicial authority the question of its forfeiture. The Washington, 17 Law Rep. 497, Fed. Case 17, 222. "The seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of the government." Mr. Justice Bradley, in Boyd v. United States, 116 U. S. 616, 623, 29 L. Ed. 746, 748.

## Prize.

"Prize is generally used as a technical term to express a legal capture." Miller v Resolution, 2 Dall. 1, 1 L. Ed. 263. A prize proceeding is a civil action. *Ex parte* Graham, 3 Wash. C. C. 456, Fed. Case 5657. The prize jurisdiction in admiralty is exclusive. Maisonnaire v. Keating, 2 Gall. 325, Fed. Case 8978. Jurisdiction attaches whenever the prize or the proceeds thereof can be traced. Jecker v. Montgomery, 13 How. 498, 14 L. Ed. 615.

4. "All suits arising under any law relating to the slave trade."

See § 629, R. S. U. S., 1 Comp. Stat. p. 508, 4 Fed. Stat. Ann. p. 248, Pierce, Code, § 7173. For laws relating to the slave trade see §§ 5375-5382; 5524 and 5525; 5551-5569, R. S. U. S.

5. "All cases arising under any law providing for internal revenue, or from revenue from imports or tonnage, except those cases arising under any law providing revenue from imports, jurisdiction of which has been conferred upon the court of customs appeals."

See 5th clause of § 563, R. S. U. S., 1 Comp. Stat. p. 456, 4 Fed. Stat. Ann. p. 220, Pierce, Code § 7017; and fourth clause of § 629, R. S. U. S., 1 Comp. Stat. p. 503, 4 Fed. Stat. Ann., p. 246, Pierce, Code, § 7173. Also § 643, R. S. U. S., 1 Comp. Stat. p. 521, 4 Fed. Stat. Ann. 260, Pierce, Code, § 7184.

"REVENUE LAWS." "The term 'revenue law' when used in connection with the jurisdiction of the courts of the United States, means a law imposing duties on imports or tonnage, or a law providing in terms for revenue; that is to say, a law which is directly traceable to the power granted to Congress by § 8, art. 1, of the Constitution, 'to lay and collect taxes, duties, imports, and excises.' This view is strengthened by the third subdivision of § 699, which gives this court jurisdiction, without reference to the value in dispute, of 'any final judgment of a circuit court * * * in any civil action against an officer of the revenue, for any act done by him in the performance of his official duty.' Certainly it will not be claimed that the clerk of a District Court of the United States is an 'officer of the revenue'; but there is nothing to indicate that the term 'revenue' has any different signification in this subdivision of the section from that which it had in the other. The clerk of a court of the United States collects his taxable 'compensation,' not as the revenue of the United States, but as the fees and emoluments of his office, with an obligation on his part to account to the United States for all he gets over a certain sum which is fixed by law. This obligation does not grow out of any 'revenue law,' properly so called, but out of a statute governing an officer of a Court of the United States." Mr. Chief Justice Waite, in United States v. Hill, 123 U. S. 681, 686, 31 L. Ed. 275, 277.

6. "All cases arising under the postal laws."

The class of cases is one over which the Circuit Courts have had jurisdiction under the fourth paragraph of § 629, R. S. U. S., 1 Comp. Stat.

p. 503. The District Courts have had concurrent jurisdiction under the seventh paragraph of § 563, R. S. U. S., 1 Comp. Stat. p. 457, whose language is identical with that of The Judicial Code.

As to the inherent powers of the States before the foundation of the Union, to establish postoffices and postroads, and to exercise the police power over them, see In re Rapier, 143 U. S. 110, 134, 36 L. Ed. 93, 9 U. S. E. p. 552.

THE CONSTITUTIONAL PROVISION is that of Article 1, § 8, "The Congress shall have power * * * to establish post-offices and post-roads." Of this provision Mr. Chief Justice Waite said: "Since the case of Gibbons v. Ogden, 9 Wheat. 1, 6 L. Ed. 23, it has never been doubted that commercial intercourse is an element of commerce which comes within the regulating power of Congress. Post-offices and post-roads are established to facilitate the transmission of intelligence. Both commerce and the postal service are placed within the power of Congress, because, being national in their operation, they should be under the protecting care of the National Government.

"The powers thus granted are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapted themselves to the new development of time and circumstances. They extend from the horse with its rider to the stage-coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate, at all times and under all circumstances. As they were intrusted to the General Government for the good of the nation, it is not only the right but the duty of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily incumbered by state legislation." Pensacola Tel. Co. v. Western Union Tel. Co., 96 U. S. (6 Otto) 1, 24, 24 L. Ed. 708, 710.

### 7. All suits at law or in equity arising under the patent, the copyright, and the trademark laws.

PATENT LAWS. The jurisdiction of the federal courts over "all cases arising under the patent-right or copyright laws of the United States" was made exclusive of the courts of the several States by § 711, R. S. U. S., 1 Comp. Stat. p. 577, 4 Fed. Stat. Ann. p. 493, Pierce, Code, § 7347. See Hopkins on Patents, § 323. See § 256, *post.*

THE CONSTITUTIONAL PROVISION. Of this Constitutional provision, Mr. Chief Justice Fuller said: "Since under the Constitution, Congress has power 'to promote the progress and science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries, Art. I, § 8, and to make all laws which shall be necessary and proper for carrying that express power into execution, it follows that Congress may provide such instrumentalities in respect of securing to inventors the exclusive right to their discoveries as in its judgment will be best calculated to effect that object." United States v. Duell, 172 U. S. 576, 583, 43 L. Ed. 559, 561. "The power * * * to issue a patent for an invention, and the authority to issue such an instrument for a grant of land, emanate from the same source, and although exercised by different bureaus or officers under the government, are of the same nature, character, and validity, and imply in each case the exercise of the power of the government according to modes regulated by Acts of Congress." Mr. Justice Miller in United States v. Bell Telephone Co., 128 U. S. 315, 358, 32 L. Ed. 450, 459.

COPYRIGHT LAWS. See § 711, R. S. U. S., 1 Comp. Stat. p. 577, 4 Fed. Stat. Ann. p. 493, Pierce, Code, § 7347. For liability for infringement of copyright see Act of March 4, 1909, § 25, 35 Stat. at L. 1075, Pierce, Code, *§ 1587, Supp. p. 273. See § 256, *post.*

THE CONSTITUTIONAL PROVISION. The foundation to the right of protection for literary property in the Constitution has been thus referred to by Mr. Justice Blatchford: "Although the Constitution of the United States, in § 8 of article 1, provides that the Congress shall have power 'to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries,' yet the means for securing such right to authors are to be prescribed by Congress. It has prescribed such a method, and that method is to be followed. No authority exists for obtaining a copyright, beyond the extent to which Congress has authorized it. A copyright cannot be sustained as a right existing at common law; but, as it exists in the United States, it depends wholly on the legislation of Congress." Banks v. Manchester, 128 U. S. 244, 32 L. Ed. 425.

TRADEMARK LAWS. The jurisdictional provision of the present registration Act is the Act of February 20, 1905, § 17, 33 Stat. at L. 724, Supp. Comp. Stat. p. 667, 10 Fed. Stat. Ann. p. 408, Pierce, Code, § 8823. See Hopkins on Trademarks (2d Ed.), p. 481. As to registrations under the former law, see § 7, Act of March 3, 1881, c. 138, 21 Stat. at L. 503, 1 Comp. Stat. p. 3403, Hopkins on Trademarks (2d Ed.), § 139.

THE CONSTITUTIONAL PROVISION. The Act of July 8, 1870, and the penal Act of August 14, 1876, were held unconstitutional in Trademark Cases, 100 U. S. 82, 25 L. Ed. 550. The Act of March 3, 1881, was enacted upon the theory that it came within the treaty-making power of the United States (Hopkins on Trademarks, 2d Ed., page 320), while the present Act, of February 20, 1905, can only be sustained upon the theory that its enactment was within the powers vested in Congress by the Commerce Clause, Article I, § 8, of the Constitution (Ibid). Speaking of the Act of March 3, 1881, Mr. Chief Justice Fuller said: "Under the act (21 Stat. at L. 502, c. 138) registration is *prima facie* evidence of ownership; * * * the certificate is evidence in any suit or action in which the registered trademark is brought in controversy; * * * the act practically enables treaty stipulations to be carried out, and affords the basis for judicial redress for infringement in foreign countries, where such redress cannot ordinarily be had without registration, as well as in the courts of the United States, when jurisdiction would not otherwise exist. For it is the assertion of rights derived under the act which gives cognizance to courts of the United States when the controversy is between citizens of the same state, though the benefits of the act cannot be availed of if the alleged trademark is not susceptible of exclusive ownership as such, and not, therefore, of registration." Elgin National Watch Co. v. Illinois Watch Co., 179 U. S. 665, 672, 45 L. Ed. 365, 377.

8. All suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the commerce court.

This provision relates to such suits and proceedings as arise under Congressional legislation enacted in pursuance of the commerce clause of the Constitution, Article I, § 8, "The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Legislation of this character has been so voluminous that we need refer only to a few illustrative acts. Act of March 3, 1889, c. 382, 25 Stat. at L. 855, 1 Comp. Stat. p. 3172 (mandamus to compel carriers to furnish equal facilities to shippers); the Act of March 2, 1893, c. 196, 27 Stat. at L. 531, 1 Comp. Stat. p. 3174 (an Act requiring carriers to use certain safety appliances; see St. Louis I. M. & S. R. Co. v. Taylor, 210 U. S. 281, 52 L. Ed. p. 1061); the Act of July 2, 1890, 26 Stat. at L. 209, c. 647, 3 Comp. Stat. p. 3200 (the Anti-Trust Act; see Northern Securities Co. v. United States, 193 U. S. 197, 48 L. Ed. 679); the Act of March 4,

1907, 34 Stat. at L. 1415, Pierce, Code, § 7933 (regulating service hours of employees); the Act of June 29, 1906, 34 Stat. at L. 607, Pierce, Code, § 6463 (to prevent cruelty to animals while in transit).

9. All suits and proceedings for the enforcement of penalties and forfeitures incurred under any law of the United States.

See § 711, R. S. U. S., 1 Comp. Stat. p. 577, 4 Fed. Stat. Ann. p. 493, Pierce, Code, § 7347. The jurisdiction thus provided for is a necessary incident of governmental power. It did not require, nor did it receive, express mention in the Constitution, save to the extent that the judiciary was manifestly created as an inseparable adjunct to the executive and legislative departments. In treating the infliction of penalties as an inherent element of government, Mr. Justice Field said: "The power of the State to impose fines and penalties for a violation of its statutory requirements is coeval with government; and the mode in which they shall be enforced, whether at the suit of a private party, or at the suit of the public, and what disposition shall be made of the amounts collected, are merely matters of legislative discretion." Missouri Pac. R. Co. v. Terry, 115 U. S. 523, 29 L. Ed. 467.

DEFINITIONS. *Penalty.* "The term 'penalty' involves the idea of punishment, and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal prosecution." Mr. Justice Field, in United States v. Chouteau, 102 U. S. 603, 611, 26 L. Ed. 246, 249. *Forfeiture.* "A punishment annexed by law to some illegal act or negligence in the owner of lands, tenements, or hereditaments, whereby he loses all his interest therein, and they become vested in the party injured as a recompense for the wrong which he alone or the public together with himself, hath sustained." Bouvier, Dict. (Rawle's Rev.), title "Forfeiture." "The term forfeiture imports a penalty; it has no necessary or natural connection with the measure or degree of injury which may result from a breach of contract, or from an imperfect performance. It implies an absolute infliction, regardless of the nature and extent of the causes by which it is superinduced. Unless, therefore, it shall have been expressly adopted and declared by the parties to be a measure of injury or compensation, it is never taken as such by courts of justice, who leave it to be enforced where this can be done in its real character, viz., that of a penalty." Mr. Justice Daniel, in Van Buren v. Digges, 11 How. 470, 13 L. Ed. 775.

10. All suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of

duties, against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture.

This provision is solely in relation to the debentures issued by the Secretary of the Treasury in accordance with §§ 3033-3038, R. S. U. S., 2 Fed. Stat. Ann. pp. 735, 736. As to the purpose for which such debentures are issued, see, §§ 3015-3036, R. S. U. S., 2 Fed. Stat. Ann. pp. 731-735, 2 Comp. Stat. pp. 1989, 1997.

11. All suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States, for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several states.

This provision is based upon the twelfth and sixteenth paragraphs of § 629, R. S. U. S., 1 Comp. Stat. p. 505, 4 Fed. Stat. Ann. p. 245, Pierce, Code, § 7173; providing that the Circuit Courts shall have jurisdiction as follows:

"Twelfth. Of all suits brought by any person to recover damages for any injury to his person or property on account of any act done by him, under any law of the United States for the protection or collection of any of the revenues thereof, or to enforce the right of citizens of the United States to vote in the several States."

"Sixteenth. Of all suits authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States." 4 Fed. Stat. Ann. pp. 248, 249. Under the twelfth paragraph it was held that a collector of internal revenue bringing suit upon his deputy's bond to recover the amount embezzled by the deputy, had received "an injury to his property." Crawford v. Johnson, 1 Deady 457, Fed. Case 3369.

Actions for damages based upon the refusal of election officers to permit the plaintiff to vote at a Federal election have been held to be actions arising under the Constitution or laws of the United States. Swafford v. Templeton, 185 U. S. 487, 492, 46 L. Ed. 1005, 1009.

12. All suits authorized by law to be brought by any person for the recovery of damages on account of any injury to

his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherence of any conspiracy mentioned in section nineteen hundred and eighty, revised statutes.

For the interpretation of § 1980, R. S. U. S., see §§ 5008, 5009, and 5518. United States v. Patrick, 54 Fed. Rep. 338. § 1980, R. S. U. S., 1 Comp. Stat. p. 1262, 1 Fed. Stat. Ann. p. 796, Pierce, Code, § 1608.

13. All suits authorized by law to be brought against any person who having knowledge that any of the wrongs mentioned in section nineteen hundred and eighty, revised statutes, are about to be done, and, having power to prevent or aid in preventing the same, neglects or refuses so to do, to recover damages for any such wrongful act.

See § 1981, R. S. U. S., 1 Comp. Stat. p. 1263, 1 Fed. Stat. Ann. p. 797. Pierce, Code, § 1609.

14. All suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity, secured by the constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States.

See § 1979, R. S. U. S., 1 Comp Stat. 1262, 1 Fed. Stat. Ann. p. 795, Pierce, Code, § 1607. See § 629, R. S. U. S., clause 16, 1 Comp. Stat. p. 505, 4 Fed. Stat. Ann. p. 249, Pierce, Code, § 7173.

15. All suits to recover possession of any office, except that of elector of president or vice president, representative in or delegate to congress, or member of a state legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided,* That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the constitution of

the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the States.

This clause re-enacts clause 13, § 629, R. S. U. S., 1 Comp. Stat. p 506, 4 Fed. Stat. Ann. p. 249, Pierce, Code, § 7173.

16. All cases commenced by the United States, or by direction of any officer, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title "National Banks," revised statutes, to enjoin the comptroller of the currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located.

Superseding the 10th and 11th clauses of § 629, R. S. U. S., 1 Comp. Stat. p. 505, 4 Fed. Stat. Ann. p. 248, Pierce, Code, § 7173.

17. All suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States.

Re-enacting the 16th clause of § 563, R. S. U. S., 1 Comp. Stat. p. 458, 4 Fed, Stat. Ann. p. 235, Pierce, Code, § 7017.

18. All suits against consuls or vice consuls.

Superseding the 17th clause of § 563, R. S. U. S., 1 Comp. Stat. p. 459, 4 Fed. Stat. Ann. p. 235, Pierce, Code, § 7017. The jurisdiction of the Supreme Court in cases affecting ambassadors, other public ministers, and consuls under Article III, § 2, of the Constitution is original but not exclusive, and hence does not invalidate this clause. Pooley v. Luco, 76 Fed. Rep. 146.

19. All matters and proceedings in bankruptcy.

Superseding the 18th clause of § 563, R. S. U. S., 1 Comp. Stat. p. 460, 4 Fed. Stat. Ann. p. 236, Pierce, Code, § 7017.

20. Concurrent with the Court of Claims, of all claims not exceeding ten thousand dollars founded upon the Constitution of the United States or any law of Congress, or upon any

regulation of an executive department, or upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable, and of all set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the government of the United States against any claimant against the government in said court: *Provided, however,* That nothing in this paragraph shall be construed as giving to either the District Courts or the Court of Claims jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which had been rejected or reported on adversely prior to the third day of March, eighteen hundred and eighty-seven, by any court, department, or commission authorized to hear and determine the same, or to hear and determine claims for pensions; or as giving to the district courts jurisdiction of cases brought to recover fees, salary, or compensation for official services of officers of the United States or brought for such purpose by persons claiming as such officers or as assignees or legal representatives thereof; but no suit pending on the twenty-seventh day of June, eighteen hundred and ninety-eight, shall abate to be affected by this provision: *And provided further,* That no suit against the government of the United States shall be allowed under this paragraph unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the suit be brought within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively. All suits brought

and tried under the provision of this paragraph shall be tried by the court without a jury.

See Act of March 3, 1887, § 2, c. 359, 24 Stat. at L. 505, 1 Comp. Stat. p. 753, 2 Fed. Stat. Ann. p. 82, Pierce, Code, § 7822. Suits under this provision are not suits at common law, and the provision making them triable without the intervention of a jury is not in violation of the Seventh Amendment. McElrath v. United States, 102 U. S. 426, 26 L. Ed. 189; United States v. Saunders, 79 Fed. Rep. 407, 24 C. C. A. 649. Under this section an assignee may sue in his own name. United States v. Jones, 131 U. S. 1, 33 L. Ed. 90; Emmons v. United States, 48 Fed. Rep. 43.

21. Of proceedings in equity, by writ of injunction, to restrain violation of the provisions of laws of the United States to prevent the unlawful inclosure of public lands; and it shall be sufficient to give the court jurisdiction if service of original process be had in any civil proceeding on any agent or employee having charge or control of the inclosure.

See Act of February 25, 1885, § 2, 23 Stat. at L. 321, 6 Fed. Stat. Ann. p. 533, 1 Comp. Stat. p. 1524, Pierce, Code, § 10259.

22. All suits and proceedings arising under any law regulating the immigration of aliens, or under the contract labor laws.

See Act of March 3, 1891, § 13, 26 Stat. at L. 1084, 1 Comp. Stat. p. 1294, 3 Fed. Stat. Ann. p. 304.

23. All suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies.

This class of causes is substantially identical with those of Clause 8, this section, which see. The anti-trust laws are justified solely by the Commerce Clause of the Constitution. See jurisdictional provision, § 4, Act of July 2, 1890, c. 647, 26 Stat. at L. 209, 3 Comp. Stat. p. 3201, 7 Fed. Stat. Ann. p. 336, Pierce, Code, § 7998.

24. All actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty.

See Act of February 6, 1901, 31 Stat. at L. 760, 3 Fed. Stat. Ann. p. 503, Pierce, Code, § 5807.

25. Suits in equity brought by any tenant in common or joint tenant for the partition of lands in cases where the United States is one of such tenants in common or joint tenants, such suits to be brought in the district in which such land is situate.

Superseding Act of May 17, 1898, § 1, c. 339, 30 Stat. at L. 416, 1 Comp Stat. p. 516.

SEC. 25. The District Courts shall have appellate jurisdiction of the judgments and orders of United States commissioners in cases arising under the Chinese exclusion laws.

This section appeared as part of the act of September 13, 1888, ch. 1015, § 13, 25 Stat. at L. 476.

See the Chinese Exclusion Acts, May 6, 1882, c. 126, 22 Stat. at L. 58; Act July 5, 1884, c. 220, 23 Stat. at L. 115; Act May 5, 1892, c. 60, 27 Stat. at L. 25. 1 Comp. Stat. pp. 1305, 1328; Pierce, Code, §§ 4772, 4835, 1 Fed. Stat. Ann. 754. As to the constitutionality of Exclusion Acts generally the Supreme Court has said:

"It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. In the United States, this power is vested in the national government, to which the Constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the government, and may be exercised either through treaties made by the President and Senate, or through statutes enacted by Congress." Ekiu v. United States, 142 U. S. 651, 659, 35 L. Ed. 1146, 1149. Following this principle the Chinese Exclusion Acts have been held valid. Chae Chan Ping v. United States, 130 U. S. 581, 32 L. Ed. 1068; Fong Yue Ting v. United States, 149 U. S. 698, 37 L. Ed. 905.

SEC. 26. The district court of the district of Wyoming shall have jurisdiction of all felonies committed within the Yellowstone National Park and appellate jurisdiction of judgments in cases of conviction before the commissioner authorized to be appointed under section five of an Act entitled "An Act to protect the birds and animals in Yellowstone National Park, and to punish crimes in said Park, and

for other purposes," approved May seventh, eighteen hundred and ninety-four.

See Act of May 7, 1894, §§ 2, 3, 4, 28 Stat. at L. 73, 6 Fed. Stat. Ann. p. 618, 1 Comp. Stat. p. 1561, Pierce, Code, §§ 8221, 8222, 8224.

SEC. 27. The District Court of the United States for the district of South Dakota shall have jurisdiction to hear, try, and determine all actions and proceedings in which any person shall be charged with the crime of murder, manslaughter, rape, assault with intent to kill, arson, burglary, larceny, or assault with a dangerous weapon, committed within the limits of any Indian reservation in the State of South Dakota.

Act of February 2, 1903, 32 Stat. at L. 793, 1 Comp. Stat. p. 719, 10 Fed. Stat. Ann. 121, Pierce, Code, § 7020.

## CHAPTER THREE.

### DISTRICT COURTS—REMOVAL OF CAUSES.


Sec.
28. Removal of suits from State to United States district courts.
29. Procedure for removal.
30. Suits under grants of land from different States.
31. Removal of causes against persons denied any civil rights, etc.
32. When petitioner is in actual custody of State court.
33. Suits and prosecutions against revenue officers, etc.
34. Removal of suits by aliens.
35. When copies of records are refused by clerk of State court.
36. Previous attachment bonds, orders, etc., remain valid.
37. Suits improperly in district court may be dismissed or remanded.
38. Proceedings in suits removed.
39. Time for filing record; return of record, how enforced.


SEC. 28. Any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States are given original jurisdiction by this title, which may now be pending or which may hereafter be brought, in any State court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction by this title, and which are now pending or which may hereafter be brought, in any State court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being non-residents of that State. And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the district court of the United States for the proper district. And where a suit is now pending, or may hereafter be brought,

in any State court, in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State, any defendant, being such citizen of another State, may remove such suit into the district court of the United States for the proper district, at any time before the trial thereof, when it shall be made to appear to said district court that from prejudice or local influence he will not be able to obtain justice in such State court, or in any other State court to which the said defendant may, under the laws of the State, have the right, on account of such prejudice or local influence, to remove said cause: *Provided,* That if it further appear that said suit can be fully and justly determined as to the other defendants in the State court, without being affected by such prejudice or local influence, and that no party to the suit will be prejudiced by a separation of the parties, said district court may direct the suit to be remanded, so far as relates to such other defendants, to the State court, to be proceeded with therein. At any time before the trial of any suit which is now pending in any district court, or may hereafter be entered therein, and which has been removed to said court from a State court on the affidavit of any party plaintiff that he had reason to believe and did believe that, from prejudice or local influence, he was unable to obtain justice in said State court, the district court shall, on application of the other party, examine into the truth of said affidavit and the grounds thereof, and, unless it shall appear to the satisfaction of said court that said party will not be able to obtain justice in said State court, it shall cause the same to be remanded thereto. Whenever any cause shall be removed from any State court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the district court so remanding such cause shall be allowed: *Provided,* That no case arising under an Act entitled "An Act relating to the liability of common carriers by railroad to their employes in certain

cases," approved April twenty-second, nineteen hundred and eight, or any amendment thereto, and brought in any State court of competent jurisdiction shall be removed to any court of the United States.

See Act March 3, 1875, c. 137, § 2, 18 Stat. at L. 470. Act March 3, 1887, c. 373, § 1, 24 Stat. at L. 552. Act August 13, 1888, c. 866, § 1, 25 Stat. at L. 433, 1 Comp. Stat. p. 509. 4 Fed. Stat. Ann. 312. Pierce, Code, § 7203.

As to what are "suits of a civil nature," see *ante,* notes to § 24.

GENERAL PRINCIPLES CONCERNING REMOVAL OF CAUSES. There is no constitutional right to removal of causes from state to Federal courts. This question was ruled upon by Judge Aldrich, as follows: "We will dispose of the position taken by the petitioner on reargument, that the right of removal exists under article 3, § 2, of the constitution of the United States, and cannot, therefore, be abridged by congress or denied by the court. This position is not tenable. The constitution declares the lines within which congress may confer jurisdiction, but the ground and limit of actual jurisdiction to be exercised by the courts are to be found in the acts of congress, and not in the constitution. It is not necessary to inquire as to the extreme limit of the constitutional scope of judicial power. Within its scope, whatever that may be, congress may confer jurisdiction, and so much of the constitutional grant of judicial power as is not bestowed upon the federal courts by legislative provision remains dormant. In other words, congress is to define and describe to what extent the judicial power is to be exercised by the federal courts." In re Cilley, 58 Fed. Rep. 977. On the other hand, the power of congress to authorize such removal has long been settled. "The constitutional right of congress to authorize the removal (from state to federal courts) before trial of civil cases arising under the laws of the United States has long since passed beyond doubt. It was exercised almost contemporaneously with the adoption of the Constitution and the power has been in constant use ever since. Mr. Justice Strong, in Tennessee v. David, 100 U. S. 257, 265, 25 L. Ed. 648, 651. Congress having acted, no legislative or judicial power of the state can thwart the right of removal. "The legislature or the judiciary of a state can neither defeat the right given by a constitutional act of Congress to remove a case from a court of the state into the Circuit Court of the United States, nor limit the effect of such removal." Mr. Justice Gray, in Goldey v. Morning News, 156 U. S. 518, 523, 39 L. Ed. 517, 519.

THE NATURE OF THE JURISDICTION EXERCISED UPON REMOVAL. The

purpose of removal is to try the cause; it cannot be removed from the state court to a federal court for any purpose but trial. Vannevar v. Bryant, 21 Wall. 41, 22 L. Ed. 476. "The power of removal is certainly not, in strictness of language, an exercise of original jurisdiction; it presupposes an exercise of original jurisdiction to have attached elsewhere." Martin v. Hunter, 1 Wheat. 304, 349, 4 L. Ed. 97, 108.

WHAT ACTIONS ARE REMOVABLE. The causes which are made removable from the state to the federal courts by this section are those of which the district courts are given original jurisdiction by § 24 of the Judicial Code, *ante,* which is far more comprehensive than the exclusive jurisdiction conferred by § 256, *post.* The right of removal, upon the ground that the suit was one arising under the constitution or laws of the United States was formerly given to either party, plaintiff or defendant by § 2 of the Act of March 3, 1875, 18 Stat. at L. 470. Under the Act of August 13, 1888, § 2, 25 Stat. at L. 433, the right of removal was limited to the defendants and to that class of suits of which the circuit courts were then given original jurisdiction. Caples v. Texas & P. R. Co., 67 Fed. Rep. 9, 11; Tennessee v. Union & Planters' Bank, 152 U. S. 461, 38 L. Ed. 511. The right of removal can only be exercised as provided by an act of congress. Gumbel v. Pitkin, 124 U. S. 153, 31 L. Ed. 374. Congress has the power, which it has sometimes exercised, to authorize the removal of causes from state courts to the United States court which could not have been originally brought in the latter. Mr. Justice Bradley, in a dissenting opinion, has cited the illustration, under the Judiciary Act of 1789, § 12, where a suit involving the title to land has been commenced in a state court between two citizens of the same state, and before the trial one of the parties shows by affidavit that he claims title under a grant from another state. Gaines v. Fuentes, 92 U. S. 10, 24, 23 L. Ed. 524, 529. On the other hand Mr. Chief Justice Fuller has said: "While there are cases where the courts of the United States may acquire jurisdiction by removal from state courts when jurisdiction would not have attached if the suits had been originally brought therein, those are cases of jurisdiction over the parties and not of jurisdiction based upon the subject-matter of the litigation." Cates v. Allen, 149 U. S. 451, 460, 37 L. Ed. 804, 808. Again referring to the cases over which the courts of the United States have jurisdiction exclusive of the courts of the several States when an action within the range of those defined by § 256 of the Judicial Code is brought in the State court and removed to the Federal court, the latter court acquires jurisdiction to the extent of directing the dismissal of the cause upon the ground that the merits were not within the jurisdiction of the State court, and for that reason it will not remand.

Auracher v. Omaha & St. L. R. Co., 102 Fed. Rep. 1. But where the case is one of which the State court had jurisdiction, the fact that after removal a defense is interposed which is based upon a Federal statute of which the State court could not have taken cognizance, does not defeat the jurisdiction of the Federal court. Lehigh Valley R. Co. v. Rainey, 99 Fed. Rep. 596. But allegations that a defense is intended to be made which is based on the constitution or a law or a treaty of the United States, or a State or Federal statute in conflict with the Constitution of the United States will not render a cause removable from the State court, which is not otherwise removable. "A case cannot be removed from a state court into the Circuit Court of the United States on the sole ground that it is one arising under the Constitution, laws, or treaties of the United States, unless that appears by plaintiff's statement of his own claim; and if it does not so appear, the want of it cannot be supplied by any statement of the petition for removal or in the subsequent pleadings." Mr. Chief Justice Fuller, in Arkansas v. Kansas & T. Coal Co., 183 U. S. 185, 188, 46 L. Ed. 144, 146. When the right of removal based upon the Constitution or laws of the United States exists, the citizenship of the parties is immaterial. Cummings v. Chicago, 188 U. S. 410, 426, 47 L. Ed. 525, 529. In such a case the petition for removal need not recite the citizenship of the parties. Lacroix v. Lyons, 27 Fed. Rep. 403.

Waiver of Objections to Jurisdiction by Removal. "The inhibition found in the Act of August 13, 1888 (25 Stat. at L. 433, c. 866), against bringing suits in the federal court otherwise than in the district of which the plaintiff or the defendant is an inhabitant, when jurisdiction depends upon diversity of citizenship, is a privilege accorded to the defendant, which may be waived, and is waived, by a removal under the circumstances above stated." Memphis Sav. Bank v. Houchens, 115 Fed. Rep. 96, 102, 52 C. C. A. 176.

Fraudulent Joinder of Defendants to Defeat Removal. Where there are resident and non-resident defendants, the non-resident may show that his co-defendant was fraudulently joined with him to prevent removal of the cause by the non-resident defendant. Union Terminal R. Co. v. Chicago B. & Q. R. Co., 119 Fed. Rep. 209, 211. The burden of proof is upon the petitioner for removal to establish the fraudulent joinder. Kansas City S. B. R. Co. v. Herman, 187 U. S. 63, 47 L. Ed. 76.

Sec. 29. Whenever any party entitled to remove any suit mentioned in the last preceding section, except suits removable on the ground of prejudice or local influence, may desire

to remove such suit from a State court to the district court of the United States, he may make and file a petition, duly verified, in such suit in such State court at the time, or any time before the defendant is required by the laws of the State or the rule of the State court in which such suit is brought to answer or plead to the declaration or complaint of the plaintiff, for the removal of such suit into the district court to be held in the district where such suit is pending, and shall make and file therewith a bond, with good and sufficient surety, for his or their entering in such district court, within thirty days from the date of filing said petition, a certified copy of the record in such suit, and for paying all costs that may be awarded by the said district court if said district court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit if special bail was originally requisite therein. It shall then be the duty of the State court to accept said petition and bond and proceed no further in such suit. Written notice of said petition and bond for removal shall be given the adverse party or parties prior to filing the same. The said copy being entered within said thirty days as aforesaid in said district court of the United States, the parties so removing the said cause shall, within thirty days thereafter, plead, answer, or demur to the declaration or complaint in said cause, and the cause shall then proceed in the same manner as if it had been originally commenced in the said district court.

See Act. March 3, 1875, c. 137, § 3, 18 Stat. at L. 470. Act March 3, 1887, c. 373, § 1, 24 Stat. at L. 552. Act August 13, 1888, c. 866, § 1, 25 Stat. at L. 433. 1 Comp. Stat. 510, 4 Fed Stat. Ann. 349, Pierce, Code, § 7204.

Of the practice under the foregoing provision Judge Adams has said: "§ 3 of the judiciary act, supra, according to its clear import and as uniformly interpreted by the Supreme Court, authorizes the removal of a cause from a state court to the proper federal court upon the filing of a petition disclosing the right to remove and the giving of the prescribed bond. Upon the filing of such petition it becomes a part of the record, and if, on the face of the record so constituted, a suit appears to be re-

movable, the state court in which the petition is filed is bound to surrender its jurisdiction and proceed no further. Such a petition presents for the consideration of the state court a question of law only, whether, assuming the facts stated in the petition to be true, the face of the record discloses a removable cause under the law.

"When the right of removal is made to depend upon the existence of certain facts, they must be taken by the state court to be true as averred in the petition. If it is desired to controvert such facts or any of them, the plaintiff must make an issue with respect to them in the federal court, and that issue must be tried in that court. If the state court refuses to make the order of removal on the showing made by the face of the record, the defendant may nevertheless, within a prescribed time, enter a copy of the record as it stood, on the filing of the petition, in the proper federal court and have the cause docketed there. Thereupon the latter court is required to proceed in the exercise of the jurisdiction lost by the state court upon the filing of the petition and bond with it." Donovan v. Wells, Fargo & Co., 168 Fed. Rep. 363, 366, 94 C. C. A. 609.

SEC. 30. If in any action commenced in a State court the title of land be concerned, and the parties are citizens of the same State and the matter in dispute exceeds the sum or value of three thousand dollars, exclusive of interest and costs, the sum or value being made to appear, one or more of the plaintiffs or defendants, before the trial, may state to the court, and make affidavit if the court require it, that he or they claim, and shall rely upon, a right or title to the land under a grant from a State, and produce the original grant, or an exemplification of it, except where the loss of public records shall put it out of his or their power, and shall move that any one or more of the adverse party inform the court whether he or they claim a right or title to the land under a grant from some other State, the party or parties so required shall give such information, or otherwise not be allowed to plead such grant or give it in evidence upon the trial. If he or they inform the court that he or they do claim under such grant, any one or more of the party moving for such information may then, on petition and bond, as hereinbefore mentioned in this chapter, remove the cause for trial to the district court of the United States next to be holden in such district; and any one of either party removing the cause shall not be allowed to

plead or give evidence of any other title than that by him or them stated as aforesaid as the ground of his or their claim.

See § 647 R. S. U. S. Act of Sept. 24, 1789, c. 20, § 12, 1 Stat. at L. 79; 1 Comp. Stat. p. 524, 4 Fed. Stat. Ann. 265.

SEC. 31. When any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or can not enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next district court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the State courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. It shall be the duty of the clerk of the State court to furnish such defendant, petitioning for a removal, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the district court on the first day of its session, the cause shall proceed therein in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the district court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect

of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit and dismiss the case at the costs of the plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the district court, as herein provided, a certificate, under the seal of the district court, stating such failure, shall be given, and upon the production thereof in said State court the cause shall proceed therein as if no petition for removal had been filed.

Re-enactment of § 641, R. S. U. S. 1 Comp. Stat. 520, 4 Fed. Stat. Ann. 258, Pierce Code § 7182. Act May 31, 1870, c. 114, §§ 16, 18, 16 Stat. at L. 144. See Act April 9, 1866, c. 31, § 3, 14 Stat. at L. 27; Act March 3, 1863, c. 81, § 5, 12 Stat. at L. 756; Act May 11, 1866, c. 80, §§ 3, 5, 14 Stat. at L. 46.

SEC. 32. When all the acts necessary for the removal of any suit or prosecution, as provided in the preceding section, have been performed, and the defendant petitioning for such removal is in actual custody on process issued by said State court, it shall be the duty of the clerk of said district court to issue a writ of habeas corpus cum causa, and of the marshal, by virtue of said writ, to take the body of the defendant into his custody, to be dealt with in said district court according to law and the orders of said court, or, in vacation, of any judge thereof; and the marshal shall file with or deliver to the clerk of said State court a duplicate copy of said writ.

Re-enactment of § 642, R. S. U. S. 1 Comp. St. p. 521, 4 Fed. Stat. Ann. p. 260, Pierce Code § 7183. Act Feb. 5, 1867, c. 27, 14 Stat. at L. 385. See Act March 3, 1863, c. 81, § 5, 13 Stat. at L. 756; Act May 11, 1866, c. 80, §§ 3, 5, 14 Stat. at L. 46; Act April 9, 1866, c. 31, § 3, 14 Stat. at L. 27.

SEC. 33. When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States now or hereafter enacted, or against any person acting under or by authority of any such officer, on

account of any act done under color of his office or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law; or is commenced against any person holding property or estate by title derived from any such officer, and affects the validity of any such revenue law; or when any suit is commenced against any person for on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the said suit or prosecution may, at any time before the trial or final hearing thereof, be removed for trial into the district court next to be holden in the district where the same is pending, upon the petition of such defendant to said district court, and in the following manner: Said petition shall set forth the nature of the suit or prosecution and be verified by affidavit, and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced, or of the United States, stating that, as counsel for the petitioner, he has examined the proceedings against him and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall thereupon be entered on the docket of the district court, and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. When the suit is commenced in the State court by summons, subpœna, petition, or other process except capias, the clerk of the district court shall issue a writ of certiorari to the State court, requiring it to send to the district court the record and proceedings in the cause. When it is commenced by capias or by any other similar form or proceeding by which a personal arrest is ordered, he shall issue a writ of habeas corpus cum causa, a duplicate of which shall be delivered to the clerk of the State court, or left at his office, by the marshal

of the district or his deputy, or by some person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the State court shall be void. If the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the district court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the district court that no copy of the record and proceedings therein in the State court can be obtained, the district court may allow and require the plaintiff to proceed de novo and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said district court. On failure of the plaintiff so to proceed, judgment of non prosequitur may be rendered against him, with costs for the defendant.

Superseding § 643, R. S. U. S., 1 Comp. Stat. p. 520, 4 Fed. Stat. Ann. p. 260, Pierce Code § 7184. See Act May 31, 1870, c. 114, §§ 16, 18, 16 Stat. at L. 144; Act April 9, 1866, c. 31, § 3, 14 Stat. at L. 27; Act March 3, 1863, c. 81, § 5, 12 Stat. at L. 756; Act May 11, 1866, c. 80, §§ 3, 5, 14 Stat. at L. 46.

SEC. 34. Whenever a personal action has been or shall be brought in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was, a civil officer of the United States, being a non-resident of that State wherein jurisdiction is obtained by the State court, by personal service of process, such action may be removed into the district court of the United States in and for the district in which the defendant shall have been served with the process, in the same manner as now provided for the removal of an action brought in a State court by the provisions of the preceding section.

Superseding § 644, R. S. U. S. 1 Comp. Stat. p. 523, 4 Fed. Stat. Ann. p. 264, Pierce Code, § 7185. See Act March 30, 1872, c. 72, 17 Stat. at L. 44.

SEC. 35. In any case where a party is entitled to copies of the records and proceedings in any suit or prosecution in a State court, to be used in any court of the United States, if the clerk of said State court, upon demand, and the payment or tender of the legal fees, refuses or neglects to deliver to him certified copies of such records and proceedings, the court of the United States in which such records and proceedings are needed may, on proof by affidavit that the clerk of said State court has refused or neglected to deliver copies thereof, on demand as aforesaid, direct such record to be supplied by affidavit or otherwise, as the circumstances of the case may require and allow; and thereupon such proceeding, trial, and judgment may be had in the said court of the United States, and all such processes awarded, as if certified copies of such records and proceedings had been regularly before the said court.

Re-enacting § 645 R. S. U. S., 1 Comp. Stat. p. 523, 4 Fed. Stat. Ann. p. 264, Pierce Code, § 7186. See Act March 2, 1833, c. 57, § 4, 4 Stat. L. 634; Act Feb. 28, 1871, c. 99, § 17, 16 Stat. at L. 439.

SEC. 36. When any suit shall be removed from a State court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant had in such suit in the State court shall hold the goods or estate so attached or sequestered to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree had it been rendered by the court in which said suit was commenced. All bonds, undertakings, or security given by either party in such suit prior to its removal shall remain valid and effectual notwithstanding said removal; and all injunctions, orders, and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the court to which such suit shall be removed.

Superseding § 646, R. S. U. S., 1 Comp. Stat. p. 523, 4 Fed. Stat. Ann. p. 264, Pierce, Code § 7187.

SEC. 37. If in any suit commenced in a district court, or removed from a State court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just.

Superseding Act of March 3, 1875, c. 137, § 5, 18 Stat. at L. 472. 1 Comp. Stat. p. 511, 4 Fed. Stat. Ann. p. 371, Pierce, Code § 7206.

SEC. 38. The district court of the United States shall, in all suits removed under the provisions of this chapter, proceed therein as if the suit had been originally commenced in said district court, and the same proceedings had been taken in such suit in said district court as shall have been had therein in said State court prior to its removal.

Superseding Act of March 3, 1875, c. 137, § 6, 18 Stat. at L. 472. 1 Comp. Stat. p. 512, 4 Fed. Stat. Ann. p. 378, Pierce, Code § 7207.

SEC. 39. In all causes removable under this chapter, if the clerk of the State court in which any such cause shall be pending shall refuse to any one or more of the parties or persons applying to remove the same, a copy of the record therein, after tender of legal fees for such copy, said clerk so offending shall, on conviction thereof in the district court of the United States to which said action or proceeding was removed, be fined not more than one thousand dollars, or imprisoned not more than one year, or both. The district court to which any cause shall be removable under this chapter shall have power to issue a writ of certiorari to said State court commanding said State court to make return of the record in any such cause removed as aforesaid, or in which

any one or more of the plaintiffs or defendants have complied with the provisions of this chapter for the removal of the same, and enforce said writ according to law. If it shall be impossible for the parties or persons removing any cause under this chapter, or complying with the provisions for the removal thereof, to obtain such copy, for the reason that the clerk of said State court refuses to furnish a copy, on payment of legal fees, or for any other reason, the district court shall make an order requiring the prosecutor in any such action or proceeding to enforce forfeiture or recover penalty, as aforesaid, to file a copy of the paper or proceeding by which the same was commenced, within such time as the court may determine; and in default thereof the court shall dismiss the said action or proceeding; but if said order shall be complied with, then said district court shall require the other party to plead, and said action or proceeding shall proceed to final judgment. The said district court may make an order requiring the parties thereto to plead de novo; and the bond given, conditioned as aforesaid, shall be discharged so far as it requires copy of the record to be filed as aforesaid.

Superseding Act of March 3, 1875, c. 137, § 7, 18 Stat. at L. 472, 1 Comp. Stat. p. 512, 4 Fed. Stat. Ann. p. 378, Pierce, Code § 7208.

## CHAPTER FOUR.

### DISTRICT COURTS—MISCELLANEOUS PROVISIONS.


Sec.
40. Capital cases; where triable.
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42. Offenses begun in one district and completed in another.
43. Suits for penalties and forfeitures, where brought.
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61. Commissioners to administer oaths to appraisers.
62. Transfer of records to district court when a Territory becomes a State.
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66. Suits against receiver.
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SEC. 40. The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience.

Re-enacting § 729, R. S. U. S., 1 Comp. Stat. p. 585, 2 Fed. Stat. Ann. 354, Pierce, Code § 7365.

SEC. 41. The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought.

Re-enactment of § 730, R. S. U. S., 1 Comp. Stat. p. 585, 2 Fed. Stat. Ann. 345, Pierce, Code § 7366.

SEC. 42. When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein.

Re-enactment of § 731, R. S. U. S., 1 Comp. Stat. p. 585, 2 Fed. Stat. Ann. 347, Pierce, Code, § 7367.

SEC. 43. All pecuniary penalties and forfeitures may be sued for and recovered either in the district where they accrue or in the district where the offender is found.

Re-enactment of § 732, R. S. U. S., 1 Comp. Stat. p. 585, 3 Fed. Stat. Ann. 94, Pierce, Code, § 7368.

SEC. 44. Taxes accruing under any law providing internal revenue may be sued for and recovered either in the district where the liability for such tax occurs or in the district where the delinquent resides.

Re-enacting § 733, R. S. U. S., 1 Comp. Stat. p. 586, 3 Fed. Stat. Ann. 595, Pierce, Code, § 7369.

SEC. 45. Proceedings on seizures made on the high seas, for forfeiture under any law of the United States, may be prosecuted in any district into which the property so seized is brought and proceedings instituted. Proceedings on such seizures made within any district shall be prosecuted in the district where the seizure is made, except in cases where it is otherwise provided.

Superseding § 734, R. S. U. S., 1 Comp. Stat. 586, 3 Fed. Stat. Ann. p. 95, Pierce, Code, § 7370.

SEC. 46. Proceedings for the condemnation of any property captured, whether on the high seas or elsewhere out of the limits of any judicial district, or within any district, on account of its being purchased or acquired, sold or given, with intent to use or employ the same, or to suffer it to be used or employed, in aiding, abetting, or promoting any insurrection against the Government of the United States, or knowingly so used or employed by the owner thereof, or with his consent, may be prosecuted in any district where the same may be seized, or into which it may be taken and proceedings first instituted.

Re-enacting § 735, R. S. U. S., 1 Comp. Stat. p. 586, 6 Fed. Stat. Ann. p. 70, Pierce, Code, § 7371.

SEC. 47. Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such State or section, or of any vessel belonging, in whole or in part, to any inhabitant of such State or section, may be prosecuted in any district into which the property so seized may be taken and proceedings instituted; and the district court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district.

Re-enacting § 564, R. S. U. S. 1 Comp. Stat. 460, 4 Fed. Stat. Ann. 236, Pierce, Code, § 7024.

SEC. 48. In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. If such suit is brought in a district of which the defendant is not an inhabitant, but in which such defendant has a regular and established place of

business, service of process, summons, or subpœna upon the defendant may be made by service upon the agent or agents engaged in conducting such business in the district in which suit is brought.

Re-enacting Act of March 3, 1897, c. 395, 29 Stat. At L. 695. 1 Comp. Stat. p. 589, 5 Fed. Stat. Ann., p. 566, Pierce, Code § 7197. See Hopkins on Patents, § 324.

SEC. 49. All proceedings by any national banking association to enjoin the Comptroller of the Currency, under the provisions of any law relating to national banking associations, shall be had in the district where such association is located.

Superseding § 629, R. S. U. S., par. 11. 1 Comp. Stat. p. 505, 4 Fed. Stat. Ann. p. 245, Pierce, Code, § 7173.

SEC. 50. When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and non-joinder of parties who are not inhabitants of nor found within the district, as aforesaid, shall not constitute matter of abatement or objection to the suit.

Re-enacting § 737, R. S. U. S. 1 Comp. Stat. p. 587, 4 Fed. Stat. Ann. p. 552, Pierce, Code, § 7373.

SEC. 51. Except as provided in the five succeeding sections, no person shall be arrested in one district for trial in another, in any civil action before a district court; and, except as provided in the six succeeding sections, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens

of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant.

Superseding Act of March 3, 1875, c. 137, § 1, 18 Stat. at L. 470. 1 Comp. Stat. 507, 4 Fed. Stat. Ann. 265, Pierce, Code, § 7202.

SEC. 52. When a State contains more than one district, every suit not of a local nature, in the district court thereof, against a single defendant, inhabitant of such State, must be brought in the district where he resides; but if there are two or more defendants, residing in different districts of the State, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue, shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same State.

Re-enacting § 740, R. S. U. S. 1 Comp. Stat. p. 587, 4 Fed. Stat. Ann. 554, Pierce, Code, § 7374.

SEC. 53. When a district contains more than one division, every suit not of a local nature against a single defendant must be brought in the division where he resides; but if there are two or more defendants residing in different divisions of the district it may be brought in either division. All mesne and final process subject to the provisions of this section may be served and executed in any or all of the divisions of the district, or if the State contains more than one district, then in any of such districts, as provided in the preceding section. All prosecutions for crimes or offenses shall be had within the division of such districts where the same were committed, unless the court, or the judge thereof, upon the application of the defendant, shall order the cause to be transferred for prosecution to another division of the district. When a transfer is ordered by the court or judge, all the papers in the case, or certified copies thereof, shall be transmitted by the

clerk, under the seal of the court, to the division to which the cause is so ordered transferred; and thereupon the cause shall be proceeded with in said division in the same manner as if the offense had been committed therein. In all cases of the removal of suits from the courts of a State to the district court of the United States such removal shall be to the United States district court in the division in which the county is situated from which the removal is made; and the time within which the removal shall be perfected, in so far as it refers to or is regulated by the terms of United States courts, shall be deemed to refer to the terms of the United States district court in such division.

This section supersedes a number of previous sections applicable to particular divided districts. *California,* Act of May 29, 1900, c. 594, § 7, 31 Stat. at L. 220, 1 Comp. Stat. p. 328; *Georgia,* Act of Jan. 29, 1880, c. 17, § 7, 21 Stat. at L. 63, 1 Comp. Stat. p. 33, and Act Feb. 28, 1901, c. 621, §§ 3, 4, 31 Stat. at L. 818, 1 Comp. Stat. p. 341, are examples.

SEC. 54. In suits of a local nature, where the defendant resides in a different district, in the same State, from that in which the suit is brought, the plaintiff may have original and final process against him, directed to the marshal of the district in which he resides.

Re-enacting § 741, R. S. U. S., 1 Comp. Stat. p. 588; 4 Fed. Stat. Ann. p. 555; Pierce, Code, § 7375.

SEC. 55. Any suit of a local nature, at law or in equity, where the land or other subject-matter of a fixed character lies partly in one district and partly in another, within the same State, may be brought in the district court of either district; and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject-matter were wholly within the district for which such court is constituted.

Re-enacting § 742, R. S. U. S. 1 Comp. Stat. p. 588; 4 Fed. Stat. Ann. 555; Pierce, Code, § 7376.

SEC. 56. Where in any suit in which a receiver shall be appointed the land or other property of a fixed character, the

subject of the suit, lies within different States in the same judicial circuit, the receiver so appointed shall, upon giving bond as required by the court, immediately be vested with full jurisdiction and control over all the property, the subject of the suit, lying or being within such circuit; subject, however, to the disapproval of such order, within thirty days thereafter, by the circuit court of appeals for such circuit, or by a circuit judge thereof, after reasonable notice to adverse parties and an opportunity to be heard upon the motion for such disapproval; and subject, also, to the filing and entering in the district court for each district of the circuit in which any portion of the property may lie or be, within ten days thereafter, of a duly certified copy of the bill and of the order of appointment. The disapproval of such appointment within such thirty days, or the failure to file such certified copy of the bill and order of appointment within ten days, as herein required, shall divest such receiver of jurisdiction over all such property except that portion thereof lying or being within the State in which the suit is brought. In any case coming within the provisions of this section, in which a receiver shall be appointed, process may issue and be executed within any district of the circuit in the same manner and to the same extent as if the property were wholly within the same district; but orders affecting such property shall be entered of record in each district in which the property affected may lie or be.

A new section, framed to overcome the objections of Judge Pardee of the Fifth Circuit, and other eminent jurists, to the Judicial Code as originally drafted; in railroad receiverships, particularly, the importance of avoiding disputes as to ancillary appointments rendered this provision necessary, and it is admirably framed to secure the desired result.

SEC. 57. When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it

shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same State, such suit may be brought in either district in said State: *Provided, however,* That any defendant or defendants not actually personally notified as above provided may, at any time within one year after final judgment in any suit mentioned in this section, enter his appearance in said suit in said district court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law.

Superseding Act of March 3, 1875, c. 137, § 8, 18 Stat. at L. 472; 1 Comp. Stat. p. 513; 4 Fed. Stat. Ann. 380; Pierce, Code, § 7209.

SEC. 58. Any civil cause, at law or in equity, may, on written stipulation of the parties or of their attorneys of record signed and filed with the papers in the case, in vacation or in term, and on the written order of the judge signed and filed in the case in vacation or on the order of the court duly entered of record in term, be transferred to the court of any other division of the same district, without regard to the residence of the defendants, for trial. When a cause shall be ordered to be transferred to a court in any other division, it shall be the duty of the clerk of the court from which the transfer is made to carefully transmit to the clerk of the court to which the transfer is made the entire file of papers in the cause and all documents and deposits in his court pertaining thereto, together with a certified transcript of the records of all orders, interlocutory decrees, or other entries in the cause; and he shall certify, under the seal of the court, that the papers sent are all which are on file in said court belonging to the cause; for the performance of which duties said clerk so transmitting and certifying shall receive the same fees as are now allowed by law for similar services, to be taxed in the bill of costs, and regularly collected with the other costs in the cause; and such transcript, when so certified and received, shall henceforth constitute a part of the record of the cause in the court to which the transfer shall be made. The clerk receiving such transcript and original papers shall file the same and the case shall then proceed to final disposition as other cases of a like nature.

As to the transfer of cases in bankruptcy, see Act of July 1, 1898, § 32, c. 541, 30 Stat. at L. 554, 3 Comp. Stat. p. 3434.

SEC. 59. Whenever any new district or division has been or shall be established, or any county or territory has been or shall be transferred from one district or division to another district or division, prosecutions for crimes and offenses committed within such district, division, county, or territory prior to such transfer, shall be commenced and proceeded with the same as if such new district or division had not been created, or such county or territory had not been transferred,

unless the court, upon the application of the defendant, shall order the cause to be removed to the new district or division for trial. Civil actions pending at the time of the creation of any such district or division, or the transfer of any such county or territory, and arising within the district or division so created or the county or territory so transferred, shall be tried in the district or division as it existed at the time of the institution of the action, or in the district or division so created, or to which the county or territory is or shall be so transferred, as may be agreed upon by the parties, or as the court shall direct. The transfer of such prosecutions and actions shall be made in the manner provided in the section last preceding.

Compare the special Act relating to the creation of the Southern District of California, Act of August 5, 1886, c. 928, §§ 4, 5, 25 Stat. at L. 309.

SEC. 60. The creation of a new district or division, or the transfer of any county or territory from one district or division to another district or division, shall not affect or divest any lien theretofore acquired in the circuit or district court by virtue of a decree, judgment, execution, attachment, seizure, or otherwise, upon property situated or being within the district or division so created, or the county or territory so transferred. To enforce any such lien, the clerk of the court in which the same is acquired, upon the request and at the cost of the party desiring the same, shall make a true and certified copy of the record thereof, which, when so made and certified, and filed in the proper court of the district or division in which such property is situated or shall be, after such transfer, shall constitute the record of such lien in such court, and shall be evidence in all courts and places equally with the original thereof; and thereafter like proceedings shall be had thereon, and with the same effect, as though the cause or proceeding had been originally instituted in such court. The provisions of this section shall apply not only in all cases where a district or division is created, or a county or any territory is transferred by this or any future Act, but also in all cases where a district or division has been created, or a county

or any territory has been transferred by any law heretofore enacted.

See Act Aug. 5, 1886, c. 928, § 6, 24 Stat. at L. 309.

SEC. 61. Any district judge may appoint commissioners, before whom appraisers of vessels or goods and merchandise seized for breaches of any law of the United States, may be sworn; and such oaths, so taken, shall be as effectual as if taken before the judge in open court.

Re-enacting § 570, R. S. U. S. 1 Comp. Stat. 463; 4 Fed. Stat. Ann. p. 79; Pierce, Code, § 7030.

SEC. 62. When any Territory is admitted as a State, and a district court is established therein, all the records of the proceedings in the several cases pending in the highest court of said Territory at the time of such admission, and all records of the proceedings in the several cases in which judgments or decrees had been rendered in said territorial court before that time, and from which writs of error could have been sued out or appeals could have been taken, or from which writs of error had been sued out or appeals had been taken and prosecuted to the Supreme Court or to the circuit court of appeals, shall be transferred to and deposited in the district court for the said State.

Superseding § 567, R. S. U. S.; 1 Comp. Stat. p. 462; 4 Fed. Stat. Ann. p. 237; Pierce Code § 7027.

SEC. 63. It shall be the duty of the district judge, in the case provided in the preceding section, to demand of the clerk, or other person having possession or custody of the records therein mentioned, the delivery thereof, to be deposited in said district court; and in case of the refusal of such clerk or person to comply with such demand, the said district judge shall compel the delivery of such records by attachment or otherwise, according to law.

Superseding § 568, R. S. U. S.; 1 Comp. Stat. p. 462; 4 Fed. Stat. Ann. p. 238; Pierce Code § 7028.

SEC. 64. When any Territory is admitted as a State, and a district court is established therein, the said district court

shall take cognizance of all cases which were pending and undetermined in the trial courts of such Territory, from the judgments or decrees to be rendered in which writs of error could have been sued out or appeals taken to the Supreme Court or to the circuit court of appeals, and shall proceed to hear and determine the same.

Superseding § 569, R. S. U. S.; 1 Comp. Stat. p. 462; 4 Fed. Stat. Ann. p. 238; Pierce, Code, § 7029.

SEC. 65. Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall willfully violate any provision of this section shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both.

Superseding § 2, Act of March 3, 1887, c. 373, 24 Stat. at L. 554, as amended, 25 Stat. at L. 436; 1 Comp. Stat. 582; 4 Fed. Stat. Ann. p. 386; Pierce, Code § 7212.

SEC. 66. Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice.

Superseding § 3, Act of March 3, 1887, c. 373, 24 Stat. at L. 554, as amended, 25 Stat. at L. 436; 1 Comp. Stat. p. 582; 4 Fed. Stat. Ann. p. 387; Pierce, Code § 7213.

That this provision "was intended . . . to place receivers upon the same plane with railway companies, both as respects their liability to be sued for acts done while operating a railroad and as respects the

mode of obtaining service," see opinion of Thayer, J., in Eddy v. Lafayette, 49 Fed. Rep. 807, 809.

SEC. 67. No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of such court.

Superseding § 7, Act of March 3, 1887, c. 373, 24 Stat. at L. 555, as amended, 25 Stat. at L. 437, 1 Comp. Stat. p. 579, 4 Fed. Stat. Ann. p. 69.

The question of the eligibility of an officer under this section must be raised directly, and cannot be made the subject of collateral attack. Seaman v. Northwestern Mutual Life Ins. Co., 86 Fed. Rep. 493, 496, 30 C. C. A. 212.

SEC. 68. No clerk of a district court of the United States or his deputy shall be appointed a receiver or master in any case, except where the judge of said court shall determine that special reasons exist therefor, to be assigned in the order of appointment.

Superseding § 750, R. S. U. S.; 1 Comp. Stat. p. 591; 4 Fed. Stat. Ann. 81; Pierce Code § 236.

That consent of the parties is a sufficient reason for an appointment otherwise prohibited by this section, see Fischer v. Hayes, 22 Fed. Rep. 92.

## CHAPTER FIVE.

### DISTRICT COURTS—DISTRICTS, AND PROVISIONS APPLICABLE TO PARTICULAR STATES.


Sec.
69. Judicial districts.
70. Alabama.
71. Arkansas.
72. California.
73. Colorado.
74. Connecticut.
75. Delaware.
76. Florida.
77. Georgia.
78. Idaho.
79. Illinois.
80. Indiana.
81. Iowa.
82. Kansas.
83. Kentucky.
84. Louisiana.
85. Maine.
86. Maryland.
87. Massachusetts.
88. Michigan.
89. Minnesota.
90. Mississippi.
91. Missouri.
92. Montana.
93. Nebraska.
94. Nevada.
95. New Hampshire.
96. New Jersey.
97. New York.
98. North Carolina.
99. North Dakota.
100. Ohio.
101. Oklahoma.
102. Oregon.
103. Pennsylvania.
104. Rhode Island.
105. South Carolina.
106. South Dakota.
107. Tennessee.
108. Texas.
109. Utah.
110. Vermont.
111. Virginia.
112. Washington.
113. West Virginia.
114. Wisconsin.
115. Wyoming.


SEC. 69. The United States are divided into judicial districts, as follows:

(See §§ 530, 549, R. S. U. S. 4 Fed. Stat. Ann. p. 216, 1 Comp. Stat. p. 316, Pierce, Code § 6474.

When a judicial district consists of a State, or is bounded by the boundary lines of the State, any alteration of the boundary line will carry with it the boundary of the district. In the Matter of the Devoe Mfg. Co., 108 U. S. 401, 27 L. Ed. 764. But a change of county boundaries or the creation of new counties by the State will not change the boundaries of the judicial district defined by county lines in an Act of

Congress. Hyde v. Victoria Land Co., 125 Fed. Rep. 971. The territorial limits of a state bounding on the ocean, for the purpose of fixing the territory of a Federal judicial district, do not include that portion of the sea adjacent to the shore which is under the control of the littoral owner. The Hungaria, 41 Fed. Rep. 109. "There appears to be no restriction to the discretion of Congress in respect to the territorial limits within which they may appoint the jurisdiction of the inferior courts erected by them." The Schooner L. W. Easton, 9 Ben. 289, Fed. Case 8612.)

SEC. 70. The State of Alabama is divided into three judicial districts, to be known as the northern, middle, and southern districts of Alabama. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Cullman, Jackson, Lawrence, Limestone, Madison, and Morgan, which shall constitute the northeastern division of said district; also the territory embraced on the date last mentioned in the counties of Colbert, Franklin, and Lauderdale, which shall constitute the northwestern division of said district; also the territory embraced on the date last mentioned in the counties of Cherokee, De Kalb, Etowah, Marshall, and Saint Clair, which shall constitute the middle division of said district; also the territory embraced on the date last mentioned in the counties of Blount, Jefferson, and Shelby, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Walker, Winston, Marion, Fayette and Lamar, which shall constitute the Jasper division of said district; also the territory embraced on the date last mentioned in the counties of Calhoun, Clay, Cleburne, and Talladega, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Bibb, Greene, Pickens, Sumter, and Tuscaloosa, which shall constitute the western division of said district. Terms of the district court for the northeastern division shall be held at Huntsville on the first Tuesday in April and the second Tuesday in October; for the northwestern division, at Florence on the second Tuesday in February and the third Tuesday in October: *Provided,* That suitable rooms and accommodations for holding court at Florence shall be furnished free of expense to the Government; for the middle division, at Gadsden on the first Tuesdays in February and August: *Provided,* That suitable rooms and accommodations for the holding court at Gadsden shall be furnished free of expense to the Government; for the southern division, at Birmingham on the first Mondays in March and September, which courts shall remain in session for the transaction of business at least

six months in each calendar year; for the Jasper division, at Jasper on the second Tuesdays in January and June: *Provided,* That suitable rooms and accommodations for holding court at Jasper shall be furnished free of expense to the Government; for the eastern division, at Anniston on the first Mondays in May and November; and for the western division, at Tuscaloosa, on the first Tuesdays in January and June. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Anniston, at Florence, at Jasper, and at Gadsden, which shall be kept open at all times for the transaction of the business of said court. The district judge for the northern district shall reside at Birmingham. The middle district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Autauga, Barbour, Bullock, Butler, Chilton, Chambers, Coosa, Covington, Crenshaw, Elmore, Lee, Lowndes, Macon, Montgomery, Pike, Randolph, Russell, and Tallapoosa, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Coffee, Dale, Geneva, Henry, and Houston, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Montgomery on the first Tuesdays in May and December; and for the southern division, at Dothan on the first Mondays in June and December. The clerk for the middle district shall maintain an office, in charge of himself or a deputy, at Dothan, which shall be open at all times for the transaction of the business of said division. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Monroe, and Washington, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Dallas, Hale, Marengo, Perry, and Wilcox, which shall constitute the northern division of said district. Terms of the district court for the southern division shall be held at Mobile on the fourth Mondays in May and November; and for the northern division at Selma on the first Mondays in May and November.

SEC. 71. The State of Arkansas is divided into two districts, to be known as the eastern and western districts of Arkansas. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Sevier, Howard, Little River, Pike, Hempstead, Miller, Lafayette, Columbia, Nevada, Ouachita, Union, and Calhoun, which shall constitute the Texarkana division of said district; also the territory embraced on the date last mentioned in the counties of Polk, Scott, Yell, Logan, Sebastian, Franklin, Crawford,

Washington, Benton, and Johnson, which shall constitute the Fort Smith division of said district; also the territory embraced on the date last mentioned in the counties of Baxter, Boone, Carroll, Madison, Marion, Newton, and Searcy, which shall constitute the Harrison division of said district. Terms of the district court for the Texarkana division shall be held at Texarkana on the second Mondays in May and November; for the Fort Smith division, at Fort Smith on the second Mondays in January and June; and for the Harrison division, at Harrison on the second Mondays in April and October. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Lee, Phillips, Saint Francis, Cross, Monroe, and Woodruff, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Independence, Cleburne, Stone, Izard, Sharp, and Jackson, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Crittenden, Clay, Craighead, Greene, Mississippi, Poinsett, Fulton, Randolph, and Lawrence, which shall constitute the Jonesboro division of said district; and also the territory embraced on the date last mentioned in the counties of Arkansas, Ashley, Bradley, Chicot, Clark, Cleveland, Conway, Dallas, Desha, Drew, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lincoln, Lonoke, Montgomery, Perry, Pope, Prairie, Pulaski, Saline, Van Buren, and White, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Helena on the second Monday in March and the first Monday in October; for the northern division, at Batesville on the fourth Monday in May and the second Monday in December; for the Jonesboro division, at Jonesboro on the second Mondays in May and November; and for the western division, at Little Rock on the first Monday in April and the third Monday in October. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Little Rock, at Helena, at Jonesboro, and at Batesville, which shall be kept open at all times for the transaction of the business of the court. And the clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Fort Smith, at Harrison, and at Texarkana, which shall be kept open at all times for the transaction of the business of the court.

SEC. 72. The State of California is divided into two districts, to be known as the northern and southern districts of California. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Fresno, Inyo, Kern, Kings,

Madera, Mariposa, Merced, and Tulare, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Fresno on the first Monday in May and the second Monday in November; and for the southern division at Los Angeles, on the second Monday in January and the second Monday in July, and at San Diego on the second Mondays in March and September. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba. Terms of the district court for the northern district shall be held at San Francisco on the first Monday in March, the second Monday in July, and the first Monday in November; at Sacramento on the second Monday in April; and at Eureka on the third Monday in July.

SEC. 73. The State of Colorado shall constitute one judicial district, to be known as the district of Colorado. Terms of the district court shall be held at Denver on the first Tuesdays in May and November; at Pueblo on the first Tuesday in April; and at Montrose on the second Tuesday in September.

SEC. 74. The State of Connecticut shall constitute one judicial district, to be known as the district of Connecticut. Terms of the district court shall be held at New Haven on the fourth Tuesdays in February and September, and at Hartford on the fourth Tuesday in May and the first Tuesday in December.

SEC. 75. The State of Delaware shall constitute one judicial district, to be known as the district of Delaware. Terms of the district court shall be held at Wilmington on the second Tuesdays in March, June, September, and December.

SEC. 76. The State of Florida is divided into two districts, to be known as the northern and southern districts of Florida. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Baker, Bradford, Brevard, Citrus, Clay, Columbia, Dade, De Soto, Duval, Hamilton, Hernando, Hillsboro, Lake, Lee, Madison, Manatee, Marion, Monroe,

Nassau, Orange, Osceola, Palm Beach, Pasco, Polk, Putnam, Saint John, Sumter, Suwanee, Saint Lucie, and Volusia. Terms of the district court for the southern district shall be held at Ocala on the third Monday in January; at Tampa on the second Monday in February; at Key West on the first Mondays in May and November; at Jacksonville on the first Monday in December; at Fernandina on the first Monday in April; and at Miami on the fourth Monday in April. The district court for the southern district shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction. The northern district shall include the territory embraced on the first day of July nineteen hundred and ten, in the counties of Alachua, Calhoun, Escambia, Franklin, Gadsden, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Santa Rosa, Taylor, Wakulla, Walton, and Washington. Terms of the district court for the northern district shall be held at Tallahassee on the second Monday in January; at Pensacola on the first Mondays in May and November; at Marianna on the first Monday in April; and at Gainesville on the second Mondays in June and December.

SEC. 77. The State of Georgia is divided into two districts, to be known as the northern and southern districts of Georgia. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Campbell, Carroll, Clayton, Cobb, Coweta, Cherokee, Dekalb, Douglas, Dawson, Fannin, Fayette, Fulton, Forsyth, Gilmer, Gwinnett, Hall, Henry, Lumpkin, Milton, Newton, Pickens, Rockdale, Spalding, Towns, and Union, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Banks, Clarke, Elbert, Franklin, Greene, Habersham, Hart, Jackson, Morgan, Madison, Oglethorpe, Oconee, Rabun, Stephens, Walton, and White, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Chattahoochee, Clay, Early, Harris, Heard, Meriwether, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Talbot, Taylor, Terrell, Troup, and Webster, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Bartow, Chattooga, Catoosa, Dade, Floyd, Gordon, Haralson, Murray, Paulding, Polk, Walker, and Whitfield, which shall constitute the northwestern division of said district. Terms of the district court for northern division of said district shall be held at Atlanta on the second Monday in March and the first Monday in October; for the eastern division, at Athens on the second Monday in April and the first Monday in November; for

the western division, at Columbus on the first Mondays in May and December; and for the northwestern division, at Rome on the third Mondays in May and November. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Athens, at Columbus, and at Rome, which shall be kept open at all times for the transaction of the business of the court. The southern district shall include the territory embraced on the said first day of July, nineteen hundred and ten, in the counties of Appling, Bulloch, Bryan, Camden, Chatham, Emanuel, Effingham, Glynn, Jeff Davis, Liberty, Montgomery, McIntosh, Screven, Tatnall, Toombs, and Wayne, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Baldwin, Bibb, Butts, Crawford, Dodge, Dooly, Hancock, Houston, Jasper, Jones, Laurens, Macon, Monroe, Pike, Pulaski, Putnam, Sumter, Telfair, Twiggs, Upson, Wilcox, and Wilkinson, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Burke, Columbia, Glascock, Jefferson, Jenkins, Johnson, Lincoln, McDuffie, Richmond, Taliaferro, Washington, Wilkes, and Warren, which shall constitute the northeastern division; also the territory embraced on the date last mentioned in the counties of Berrien, Brooks, Charlton, Clinch, Coffee, Decatur, Echols, Grady, Irwin, Lowndes, Pierce, and Ware, which shall constitute the southwestern division; and also the territory embraced on the date last mentioned in the counties of Baker, Ben Hill, Calhoun, Crisp, Colquitt, Dougherty, Lee, Miller, Mitchell, Thomas, Tift, Turner, and Worth, which shall constitute the Albany division. Terms of the district court for the western division shall be held at Macon on the first Mondays in May and October; for the eastern division, at Savannah on the second Tuesdays in February, May, August, and November; for the northeastern division, at Augusta on the first Monday in April and the third Monday in November; for the southwestern division, at Valdosta on the second Mondays in June and December; and for the Albany division, at Albany on the third Mondays in June and December.

SEC. 78. The State of Idaho shall constitute one judicial district, to be known as the district of Idaho. It is divided into four divisions, to be known as the northern, central, southern, and eastern divisions. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bonner, Kootenai, and Shoshone, shall constitute the northern division of said district; and the territory embraced on the date last mentioned in the counties of Idaho, Latah, and Nez Perce, shall constitute the central division of said district; and the territory em-

braced on the date last mentioned in the counties of Ada, Boise, Blaine, Cassia, Twin Falls, Canyon, Elmore, Lincoln, Owyhee, and Washington, shall constitute the southern division of said district; and the territory embraced on the date last mentioned in the counties of Bannock, Bear Lake, Bingham, Custer, Fremont, Lemhi, and Oneida, shall constitute the eastern division of said district. Terms of the district court for the northern division of said district shall be held at Coeur d'Alene City on the fourth Monday in May and the third Monday in November; for the central division, at Moscow on the second Monday in May and the first Monday in November; for the southern division, at Boise City on the second Mondays in February and September; and for the eastern division, at Pocatello on the second Mondays in March and October. The clerk of the court shall maintain an office in charge of himself or a deputy at Coeur d'Alene City, at Moscow, at Boise City, and at Pocatello, which shall be open at all times for the transaction of the business of the court.

SEC. 79. The State of Illinois is divided into three districts, to be known as the northern, southern, and eastern districts of Illinois. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Cook, Dekalb, Dupage, Grundy, Kane, Kendall, Lake, Lasalle, McHenry, and Will, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Boone, Carroll, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Chicago on the first Mondays in February, March, April, May, June, July, September, October, and November, and the third Monday in December; and for the western division, at Freeport on the third Mondays in April and October. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Chicago and at Freeport, which shall be kept open at all times for the transaction of the business of the court. The marshal for the northern district shall maintain an office in the division in which he himself does not reside and shall appoint at least one deputy who shall reside therein. The southern district shall include the territory embraced on the first day of July, ninteen hundred and ten, in the counties of Bureau, Fulton, Henderson, Henry, Knox, Livingston, McDonough, Marshall, Mercer, Putnam, Peoria, Rock Island, Stark, Tazewell, Warren, and Woodford, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Adams, Bond, Brown, Calhoun, Cass, Christian, Dewitt, Greene, Hancock, Jersey, Logan, McLean,

Macon, Macoupin, Madison, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott, which shall constitute the southern division. Terms of the district court for the northern division shall be held at Peoria on the third Mondays in April and October; for the southern division, at Springfield on the first Mondays in January and June, and at Quincy on the first Mondays in March and September. The clerk of the court for the southern district shall maintain an office in charge of himself or a deputy at Peoria, at Springfield, and at Quincy, which shall be kept open at all times for the transaction of the business of the court. The marshal for said southern district shall appoint at least one deputy residing in the said northern district, who shall maintain an office at Peoria. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alexander, Champaign, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Gallatin, Hamilton, Hardin, Iroquois, Jackson, Jasper, Jefferson, Johnson, Kankakee, Lawrence, Marion, Massac, Monroe, Moultrie, Perry, Piatt, Pope, Pulaski, Randolph, Richland, Saint Clair, Saline, Shelby, Union, Vermilion, Wabash, Washington, Wayne, White, and Williamson. Terms of the district court for the eastern district shall be held at Danville on the first Mondays in March and September; at Cairo on the first Mondays in April and October; and at East Saint Louis on the first Mondays in May and November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Danville, at Cairo, and at East Saint Louis, which shall be kept open at all times for the transaction of the business of the court, and shall there keep the records, files, and documents pertaining to the court at that place.

SEC. 80. The State of Indiana shall constitute one judicial district, to be known as the district of Indiana. Terms of the district court shall be held at Indianapolis on the first Tuesdays in May and November; at New Albany on the first Mondays in January and July; at Evansville on the first Mondays in April and October; at Fort Wayne on the second Tuesdays in June and December; and at Hammond on the third Tuesdays in April and October. The clerk of the court shall appoint four deputy clerks, one of whom shall reside and keep his office at New Albany, one at Evansville, one at Fort Wayne, and one at Hammond. Each deputy shall keep in his office full records of all actions and proceedings of the district court held at that place.

SEC. 81. The State of Iowa is divided into two judicial districts, to be known as the northern and southern districts of Iowa. The north-

ern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allamakee, Dubuque, Buchanan, Clayton, Delaware, Fayette, Winneshiek, Howard, Chickasaw, Bremer, Blackhawk, Floyd, Mitchell, and Jackson, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Jones, Cedar, Linn, Johnson, Iowa, Benton, Tama, Grundy, and Hardin, which shall constitute the Cedar Rapids division; also the territory embraced on the date last mentioned in the counties of Emmet, Palo Alto, Pocahontas, Calhoun, Kossuth, Humboldt, Webster, Winnebago, Hancock, Wright, Hamilton, Worth, Cerro Gordo, Franklin, and Butler, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Dickinson, Clay, Buena Vista, Sac, Osceola, O'Brien, Cherokee, Ida, Lyon, Sioux, Plymouth, Woodbury, and Monona, which shall constitute the western division. Terms of the district court for the eastern division shall be held at Dubuque on the fourth Tuesday in April and the first Tuesday in December, and at Waterloo on the second Tuesdays in May and September; for the Cedar Rapids division, at Cedar Rapids on the first Tuesday in April and the fourth Tuesday in September; for the central division, at Fort Dodge on the second Tuesdays in June and November; and for the western division, at Sioux City on the fourth Tuesday in May and the third Tuesday in October. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Louisa, Henry, Des Moines, Lee, and Van Buren, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Marshall, Story, Boone, Greene, Guthrie, Dallas, Polk, Jasper, Poweshiek, Marion, Warren, and Madison, which shall constitute the central division of said district; also the territory embraced on the date last mentioned in the counties of Carroll, Crawford, Harrison, Shelby, Audubon, Cass, Pottawattamie, Mills, and Montgomery, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Adams, Clarke, Decatur, Fremont, Lucas, Page, Ringgold, Taylor, Union, and Wayne, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Scott, Muscatine, Washington, and Clinton, which shall constitute the Davenport division of said district; also the territory embraced on the date last mentioned in the counties of Davis, Appanoose, Mahaska, Keokuk, Jefferson, Monroe, and Wapello, which shall constitute the Ottumwa division of said court. Terms of the district

court for the eastern division shall be held at Keokuk on the second Tuesday in April and the third Tuesday in October; for the central division, at Des Moines on the second Tuesday in May and the third Tuesday in November; for the western division, at Council Bluffs on the second Tuesday in March and the third Tuesday in September; for the southern division, at Creston on the fourth Tuesday in March and the first Tuesday in November; for the Davenport division, at Davenport on the fourth Tuesday in April and the first Tuesday in October; and for the Ottumwa division, at Ottumwa on the first Monday after the fourth Tuesday in March, and the first Monday after the third Tuesday in October. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at Davenport and at Ottumwa, for the transaction of the business of said divisions.

SEC. 82. The State of Kansas shall constitute one judicial district, to be known as the district of Kansas. It is divided into three divisions, to be known as the first, second, and third divisions of the district of Kansas. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur, Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham, Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan, Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley, Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas, Trego, Wabaunsee, Wallace, Washington, and Wyandotte. The second division shall include the territory embraced on the date last mentioned in the counties of Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards, Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Hodgeman, Haskell, Kingman, Kiowa, Kearny, Lane, McPherson, Morton, Meade, Ness, Pratt, Pawnee, Reno, Rice, Rush, Scott, Sedgwick, Stafford, Stevens, Seward, Sumner, Stanton, and Wichita. The third division shall include the territory embraced on the said date last mentioned in the counties of Allen, Anderson, Bourbon, Cherokee, Coffey, Chautauqua, Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, and Woodson. Terms of the district court for the first division shall be held at Leavenworth on the second Monday in October; at Topeka on the second Monday in April; at Kansas City on the second Monday in January and the first Monday in October; and at Salina on the second Monday in May; but no cause, action, or proceeding shall be tried or considered at any term held at Salina unless by consent of all the parties thereto, or by order of the court for cause. Terms of the district court

for the second division shall be held at Wichita on the second Mondays in March and September; and for the third division, at Fort Scott on the first Monday in May and the second Monday in November. The clerk of the district court shall appoint two deputies, one of whom shall reside and keep his office at Fort Scott, and the other at Wichita; and the marshal shall appoint a deputy who shall reside and keep his office at Fort Scott.

SEC. 83. The State of Kentucky is divided into two districts, to be known as the eastern and western districts of Kentucky. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Carroll, Trimble, Henry, Shelby, Anderson, Mercer, Boyle, Gallatin, Boone, Kenton, Campbell, Pendleton, Grant, Owen, Franklin, Bourbon, Scott, Woodford, Fayette, Jessamine, Garrard, Madison, Lincoln, Rockcastle, Pulaski, Wayne, Whitley, Bell, Knox, Harlan, Laurel, Clay, Leslie, Letcher, Perry, Owsley, Jackson, Estill, Lee, Breathitt, Knott, Pike, Floyd, Magoffin, Martin, Johnson, Lawrence, Boyd, Greenup, Carter, Elliott, Morgan, Wolfe, Powell, Menifee, Clark, Montgomery, Bath, Rowan, Lewis, Fleming, Mason, Bracken, Robertson, Nicholas, and Harrison, with the waters thereof. Terms of the district court for the eastern district shall be held at Frankfort on the second Monday in March and the fourth Monday in September; at Covington on the first Monday in April and the third Monday in October; at Richmond on the fourth Monday in April and the second Monday in November; at London on the second Monday in May and the fourth Monday in November; at Catlettsburg on the fourth Monday in May and the second Monday in December; and at Jackson on the first Monday in March and the third Monday in September: *Provided,* That suitable rooms and accommodations are furnished for holding court at Jackson free of expense to the Government until such time as a public building shall be erected there. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Oldham, Jefferson, Spencer, Bullitt, Nelson, Washington, Marion, Larue, Taylor, Casey, Green, Adair, Russell, Clinton, Cumberland, Monroe, Metcalfe, Allen, Barren, Simpson, Logan, Warren, Butler, Hart, Edmonson, Grayson, Hardin, Meade, Breckinridge, Hancock, Daviess, Ohio, McLean, Muhlenberg, Todd, Christian, Trigg, Lyon, Caldwell, Livingston, Crittenden, Hopkins, Webster, Henderson, Union, Marshall, Calloway, McCracken, Graves, Ballard, Carlisle, Hickman, and Fulton, with the waters thereof. Terms of the district court for the western district shall be held at Louisville on the second Mondays in March and October; at Owensboro on the first Mon-

day in May and the fourth Monday in November; at Paducah on the third Mondays in April and November; and at Bowling Green on the third Monday in May and the second Monday in December. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Frankfort, at Covington, at Richmond, at London, at Catlettsburg, and at Jackson; and the clerk for the western district shall maintain an office in charge of himself or a deputy at Louisville, at Owensboro, at Paducah, and at Bowling Green, each of which offices shall be kept open at all times for the transaction of the business of said court. The clerks of the courts for the eastern and western districts, upon issuing original process in a civil action, shall make it returnable to the court nearest to the county of the residence of the defendant, or of that defendant whose county is nearest to a court, and shall, immediately upon payment by the plaintiff of his fees accrued, send the papers filed to the clerk of the court to which the process is made returnable; and whenever the process is not thus made returnable, any defendant may, upon motion, on or before the calling of the cause, have it transferred to the court to which it should have been sent had the clerk known the residence of the defendant when the action was brought.

SEC. 84. The State of Louisiana is divided into two judicial districts, to be known as the eastern and western districts of Louisiana. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the parishes of Assumption, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, Saint Bernard, Saint Charles, Saint James, Saint John the Baptist, Saint Mary, Saint Tammany, Tangipahoa, Terrebonne, and Washington, which shall constitute the New Orleans division; also the territory embraced on the date last mentioned in the parishes of Ascension, East Baton Rouge, East Feliciana, Livingston, Pointe Coupee, Saint Helena, West Baton Rouge, Iberville, and West Feliciana, which shall constitute the Baton Rouge division of said district. Terms of the district court for the New Orleans division shall be held at New Orleans on the third Mondays in February, May, and November; and for the Baton Rouge division, at Baton Rouge on the second Mondays in April and November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at New Orleans and at Baton Rouge which shall be kept open at all times for the transaction of the business of the court. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the parishes of Saint Landry, Evangeline, Saint Martin, Lafayette, and Vermilion, which shall constitute the Opelousas division of said district; also the territory embraced on the date last mentioned in

the parishes of Rapides, Avoyelles, Catahoula, La Salle, Grant, and Winn, which shall constitute the Alexandria division of said district; also the territory embraced on the said date last mentioned in the parishes of Caddo, De Soto, Bossier, Webster, Claiborne, Bienville, Natchitoches, Sabine, and Red River, which shall constitute the Shreveport division of said district; also the territory embraced on the date last mentioned in the parishes of Ouachita, Franklin, Richland, Morehouse, East Carroll, West Carroll, Madison, Tensas, Concordia, Union, Caldwell, Jackson, and Lincoln, which shall constitute the Monroe division of said district; also the territory embraced on the date last mentioned in the parishes of Acadia, Calcasieu, Cameron, and Vernon, which shall constitute the Lake Charles division of said district. Terms of the district court for the Opelousas division shall be held at Opelousas on the first Mondays in January and June; for the Alexandria division, at Alexandria on the fourth Mondays in January and June; for the Shreveport division, at Shreveport on the third Mondays in February and October; for the Monroe division, at Monroe on the first Mondays in April and October; and for the Lake Charles division, at Lake Charles on the third Mondays in May and December. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Opelousas, at Alexandria, at Shreveport, at Monroe, and at Lake Charles, which shall be kept open at all times for the transaction of the business of the court.

SEC. 85. The State of Maine shall constitute one judicial district, to be known as the district of Maine. Terms of the district court shall be held at Portland on the first Tuesdays in February and December; at Bangor on the first Tuesday in June; and at Bath on the first Tuesday in September.

SEC. 86. The State of Maryland shall constitute one judicial district, to be known as the district of Maryland. Terms of the district court shall be held at Baltimore on the first Tuesdays in March, June, September, and December; and at Cumberland on the second Monday in May and the last Monday in September. The clerk of the court shall appoint a deputy who shall reside and maintain an office at Cumberland, unless the clerk shall himself reside there; and the marshal shall also appoint a deputy, who shall reside and maintain an office at Cumberland, unless he shall himself reside there.

SEC. 87. The State of Massachusetts shall constitute one judicial district, to be known as the district of Massachusetts. Terms of the district court shall be held at Boston on the third Tuesday in March, the fourth Tuesday in June, the second Tuesday in September, and the first Tuesday

in December; and at Springfield, on the second Tuesdays in May and December: *Provided,* That suitable rooms and accommodations for holding court at Springfield shall be furnished free of expense to the Government until such time as a Federal building shall be erected there for that purpose. The marshal and the clerk for said district shall each appoint at least one deputy, to reside in Springfield and to maintain an office at that place.

SEC. 88. The State of Michigan is divided into two judicial districts, to be known as the eastern and western districts of Michigan. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Genesee, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, Shiawassee, and Tuscola, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Branch, Calhoun, Clinton, Hillsdale, Ingham, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Sanilac, Washtenaw, and Wayne, which shall constitute the southern division of said district. Terms of the district court for the southern division shall be held at Detroit on the first Tuesdays in March, June, and November; for the northern division, at Bay City on the first Tuesdays in May and October, and at Port Huron in the discretion of the judge of said court and at such times as he shall appoint therefor. There shall also be held a special or adjourned term of the district court at Bay City for the hearing of admiralty causes, beginning in the month of February in each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft, which shall constitute the northern division; also the territory embraced on the said date last mentioned in the counties of Allegan, Antrim, Barry, Benzie, Berrien, Cass, Charlevoix, Eaton, Emmet, Grand Traverse, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, St. Joseph, Van Buren, and Wexford, which shall constitute the southern division of said district. Terms of the district court for the southern division shall be held at Grand Rapids on the first Tuesdays in March and October; and for the northern division, at Marquette on the first Tuesdays in May and September. All issues of fact shall be tried at the terms in the division where such suit shall be commenced. Actions in rem and admiralty may

be brought in whichever division of the eastern district service can be had upon the res. Nothing herein contained shall prevent the district court of the western division from regulating, by general rule, the venue of transitory actions either at law or in equity, or from changing the same for cause. The clerk of the court for the western district shall reside and keep his office at Grand Rapids, and shall also appoint a deputy clerk for said court held at Marquette, who shall reside and keep his office at that place. The marshal for said western district shall keep an office and a deputy marshal at Marquette. The clerk of the court for the eastern district shall keep his office at the city of Detroit, and shall appoint a deputy for the court held at Bay City, who shall reside and keep his office at that place. The marshal for said district shall keep an office and a deputy marshal at Bay City, and mileage on service of process in said northern division shall be computed from Bay City.

SEC. 89. The State of Minnesota shall constitute one judicial district, to be known as the district of Minnesota. It is divided into six divisions, to be known as the first, second, third, fourth, fifth, and sixth divisions. The first division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Winona, Wabasha, Olmsted, Dodge, Steele, Mower, Fillmore, and Houston. The second division shall include the territory embraced on the date last mentioned in the counties of Freeborn, Faribault, Martin, Jackson, Nobles, Rock, Pipestone, Murray, Cottonwood, Watonwan, Blue Earth, Waseca, Lesueur, Nicollet, Brown, Redwood, Lyon, Lincoln, Yellow Medicine, Sibley, and Lac qui Parle. The third division shall include the territory embraced on the date last mentioned in the counties of Chisago, Washington, Ramsey, Dakota, Goodhue, Rice, and Scott. The fourth division shall include the territory embraced on the date last mentioned in the counties of Hennepin, Wright, Meeker, Kandiyohi, Swift, Chippewa, Renville, McLeod, Carver, Anoka, Sherburne, and Isanti. The fifth division shall include the territory embraced on the date last mentioned in the counties of Cook, Lake, Saint Louis, Itasca, Koochiching, Cass, Crow Wing, Aitkin, Carlton, Pine, Kanabec, Mille Lacs, Morrison, and Benton. The sixth division shall include the territory embraced on the date last mentioned in the counties of Stearns, Pope, Stevens, Bigstone, Traverse, Grant, Douglas, Todd, Ottertail, Roseau, Wilkin, Clay, Becker, Wadena, Norman, Polk, Red Lake, Marshall, Kittson, Beltrami, Clearwater, Mahnomen, and Hubbard. Terms of the district court for the first division shall be held at Winona on the third Tuesdays in May and November; for the second division, at Mankato on the fourth Tuesdays in April and October; for the third division, at Saint Paul on the first Tuesdays in

June and December; for the fourth division, at Minneapolis on the first Tuesdays in April and October; for the fifth division, at Duluth on the second Tuesdays in January and July; and for the sixth division, at Fergus Falls on the first Tuesday in May and second Tuesday in November. The clerk of the court shall appoint a deputy clerk at each place where the court is now required to be held at which the clerk shall not himself reside, who shall keep his office and reside at the place appointed for the holding of said court.

SEC. 90. The State of Mississippi is divided into two judicial districts, to be known as the northern and southern districts of Mississippi. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alcorn, Attala, Chickasaw, Choctaw, Clay, Itawamba, Lee, Lowndes, Monroe, Oktibbeha, Pontotoc, Prentiss, Tishomingo, and Winston, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Coahoma, Calhoun, Carroll, De Soto, Grenada, Lafayette, Marshall, Montgomery, Panola, Quitman, Tallahatchie, Tate, Tippah, Tunica, Union, Webster, and Yalobusha, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Aberdeen on the first Mondays in April and October; and for the western division, at Oxford on the first Mondays in June and December, and at Clarksdale on the third Mondays in June and December: *Provided,* That suitable rooms and accommodations for holding court at Clarksdale are furnished free of expense to the United States. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Amite, Copiah, Covington, Franklin, Hinds, Holmes, Jefferson, Jefferson Davis, Lawrence, Lincoln, Leflore, Madison, Pike, Rankin, Simpson, Smith, Scott, Wilkinson, and Yazoo, which shall constitute the Jackson division; also the territory embraced on the date last mentioned in the counties of Bolivar, Claiborne, Issaquena, Sharkey, Sunflower, Warren, and Washington, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Clarke, Jones, Jasper, Kemper, Lauderdale, Leake, Neshoba, Newton, Noxubee, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Forest, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Perry, and Pearl River, which constitutes the southern division of said district. Terms of the district court for the Jackson division shall be held at Jackson on the first Mondays in May and November; for the western division, at Vicksburg on the first Mondays in January and July; for

the eastern division, at Meridian on the second Mondays in March and September; and for the southern division, at Biloxi on the third Mondays in February and August. The clerk of the court for each district shall maintain an office in charge of himself or a deputy at each place in his district at which court is now required to be held, at which he shall not himself reside, which shall be kept open at all times for the transaction of the business of the court. The marshal for each of said districts shall maintain an office in charge of himself or a deputy at each place of holding court in his district.

SEC. 91. The State of Missouri is divided into two judicial districts, to be known as the eastern and western districts of Missouri. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the city of Saint Louis and the counties of Audrain, Crawford, Dent, Franklin, Gasconade, Iron, Jefferson, Lincoln, Maries, Montgomery, Phelps, Saint Charles, Saint Francois, Sainte Genevieve, Saint Louis, Warren, and Washington, which shall constitute the eastern division of said district; also the territory embraced on the date last mentioned in the counties of Adair, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Pike, Ralls, Randolph, Schuyler, Scotland, and Shelby, which shall constitute the northern division of said district; also the territory embraced on the date last mentioned in the counties of Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Stoddard, and Wayne, which shall constitute the southeastern division of said district. Terms of the district court for the eastern division shall be held at Saint Louis on the first Mondays in May and November, and at Rolla on the second Mondays in January and June: *Provided,* That suitable rooms and accommodations for holding court at Rolla are furnished free of expense to the United States; for the northern division, at Hannibal on the fourth Monday in May and the first Monday in December; and for the southeastern division, at Cape Girardeau on the second Mondays in April and October. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bates, Caldwell, Carroll, Cass, Clay, Grundy, Henry, Jackson, Johnson, Lafayette, Livingston, Mercer, Putnam, Ray, Saint Clair, Saline, and Sullivan, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Barton, Barry, Jasper, Lawrence, McDonald, Newton, Stone, and Vernon, which shall constitute the southwestern division; also the territory embraced on the date last mentioned in the counties of Andrew, Atchison, Buchanan, Clinton, Daviess, Dekalb, Gentry, Holt, Harrison,

Nodaway, Platte, and Worth, which shall constitute the Saint Joseph division; also the territory embraced on the date last mentioned in the counties of Benton, Boone, Callaway, Cooper, Camden, Cole, Hickory, Howard, Miller, Moniteau, Morgan, Osage, and Pettis, which shall constitute the central division; also the territory embraced on the date last mentioned in the counties of Christian, Cedar, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster, and Wright, which constitutes the southern division. Terms of the district court for the western division shall be held at Kansas City on the fourth Monday in April and first Monday in November, and at Chillicothe on the fourth Monday in May and the first Monday in December: *Provided,* That suitable rooms and accommodations for holding court at Chillicothe are furnished free of expense to the United States; for the southwestern division, at Joplin on the second Mondays in June and January; for the Saint Joseph division, at Saint Joseph on the first Monday in March and third Monday in September; for the central division, at Jefferson City on the third Mondays in March and October; and for the southern division, at Springfield on the first Mondays in April and October. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Kansas City, at Jefferson City, at Saint Joseph, at Chillicothe, at Joplin, and at Springfield, which shall be kept open at all times for the transaction of the business of the court. The marshal for each district shall also maintain an office in charge of himself or a deputy at each place at which court is now held in his district.

SEC. 92. The State of Montana shall constitute one judicial district, to be known as the district of Montana. Terms of the district court shall be held at Helena on the first Mondays in April and November; at Butte on the first Tuesdays in February and September; at Great Falls on the first Mondays in May and October; at Missoula on the first Mondays in January and June; and at Billings on the first Mondays in March and August. Causes, civil and criminal, may be transferred by the court or judge thereof from Helena to Butte or from Butte to Helena, or from Helena or Butte to Great Falls, or from Great Falls to Helena or Butte, in said district, when the convenience of the parties or the ends of justice would be promoted by the transfer; and any interlocutory order may be made by the court or judge thereof in either place.

SEC. 93. The State of Nebraska shall constitute one judicial district, to be known as the district of Nebraska. Said district is divided into eight divisions. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Douglas, Sarpy, Washington,

Dodge, Colfax, Platte, Nance, Boone, Wheeler, Burt, Thurston, Dakota, Cuming, Cedar, and Dixon, shall constitute the Omaha division; the territory embraced on the date last mentioned in the counties of Madison, Antelope, Knox, Pierce, Stanton, Wayne, Holt, Boyd, Rock, Brown, and Keya Paha, shall constitute the Norfolk division; the territory embraced on the date last mentioned in the counties of Cherry, Sheridan, Dawes, Box Butte, and Sioux, shall constitute the Chadron division; the territory embraced on the date last mentioned in the counties of Hall, Merrick, Howard, Greeley, Garfield, Valley, Sherman, Buffalo, Custer, Loup, Blaine, Thomas, Hooker, and Grant, shall constitute the Grand Island division; the territory embraced on the date last mentioned in the counties of Lincoln, Dawson, Logan, McPherson, Keith, Deuel, Garden, Morrill, Cheyenne, Kimball, Banner, and Scott's Bluff, shall constitute the North Platte division; the territory embraced on the date last mentioned in the counties of Cass, Otoe, Johnson, Nemaha, Pawnee, Richardson, Gage, Lancaster, Saunders, Butler, Seward, Saline, Jefferson, Thayer, Fillmore, York, Polk, and Hamilton, shall constitute the Lincoln division; the territory embraced on the date last mentioned in the counties of Clay, Nuckolls, Webster, Adams, Kearney, Franklin, Harlan, and Phelps, shall constitute the Hastings division; and the territory embraced on the date last mentioned in the counties of Gosper, Furnas, Red Willow, Frontier, Hayes, Hitchcock, Dundy, Chase, and Perkins, shall constitute the McCook division. Terms of the district court for the Omaha division shall be held at Omaha on the first Monday in April and the fourth Monday in September; for the Norfolk division, at Norfolk on the third Monday in September; for the Chadron division, at Chadron on the second Monday in September; for the Grand Island division, at Grand Island on the second Monday in January; for the North Platte division, at North Platte on the second Monday in June; for the Lincoln division, at Lincoln on the second Monday in May and the first Monday in October; for the Hastings division, at Hastings on the second Monday in March; and for the McCook division, at McCook on the first Monday in March: *Provided,* That where provision is made herein for holding court at places where there are no Federal buildings, a suitable room in which to hold court, together with light and heat, shall be provided by the city or county where such court is held, without any expense to the United States. The clerk of the court shall appoint a deputy for each division of the district in which he does not himself reside, who shall keep his office and reside at the place of holding court in the division for which he is appointed.

SEC. 94. The State of Nevada shall constitute one judicial district,

to be known as the district of Nevada. Terms of the district court shall be held at Carson City on the first Mondays in February, May, and October.

SEC. 95. The State of New Hampshire shall constitute one judicial district, to be known as the district of New Hampshire. Terms of the district court shall be held at Portsmouth on the third Tuesdays in March and September; at Concord on the third Tuesdays in June and December; and at Littleton on the last Tuesday in August.

SEC. 96. The State of New Jersey shall constitute one judicial district, to be known as the district of New Jersey. Terms of the district court shall be held at Trenton on the third Tuesdays in January, April, June, and September. At each term of the district court it shall be lawful for the judge holding such term, on consent of both parties, or on application therefor and good cause shown by either party to any civil cause set for trial or hearing at said term, to order such cause to be held or tried at the city of Newark, in said district, upon the day set for that purpose by said judge: *Provided,* That such application shall be made to said judge, either in vacation or term time, at least one week before the date set for trial of said cause, and on at least five days' notice to the opposite party or his or her attorney; and writs of subpœna to compel the attendance of witnesses at said city of Newark may issue, and jurors summoned to attend said term may be ordered by said judge to be in attendance upon said court in the city of Newark.

SEC. 97. The State of New York is divided into four judicial districts, to be known as the northern, eastern, southern, and western districts of New York. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Albany, Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondaga, Oswego, Otsego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Warren, and Washington, with the waters thereof. Terms of the district court for said district shall be held at Albany on the second Tuesday in February; at Utica on the first Tuesday in December; at Binghamton on the second Tuesday in June; at Auburn on the first Tuesday in October; at Syracuse on the first Tuesday in April; and, in the discretion of the judge of the court, one term annually at such time and place within the counties of Saratoga, Onondaga, Saint Lawrence, Clinton, Jefferson, Oswego, and Franklin, as he may from time to time appoint. Such appointment shall be made by notice of at least twenty days published in a newspaper published at the place where

said court is to be held. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Richmond, Kings, Queens, Nassau, and Suffolk, with the waters thereof. Terms of the district court for said district shall be held at Brooklyn on the first Wednesday in every month. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Columbia, Dutchess, Greene, New York, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester, with the waters thereof. Terms of the district court for said district shall be held at New York City on the first Tuesday in each month. The district courts of the southern and eastern districts shall have concurrent jurisdiction over the waters within the counties of New York, Kings, Queens, Nassau, Richmond, and Suffolk, and over all seizures made and all matters done in such waters; all processes or orders issued within either of said courts or by any judge thereof shall run and be executed in any part of said waters. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates, with the waters thereof. Terms of the district court for said district shall be held at Elmira on the second Tuesday in January; at Buffalo on the second Tuesdays in March and November; at Rochester on the second Tuesday in May; at Jamestown on the second Tuesday in July; at Lockport on the second Tuesday in October; and at Canandaigua on the second Tuesday in September. The regular sessions of the district court for the western district for the hearing of motions and for proceedings in bankruptcy and the trial of causes in admiralty, shall be held at Buffalo at least two weeks in each month of the year, except August, unless the business is sooner disposed of. The times for holding the same and such other special sessions as the court shall deem necessary shall be fixed by the rules of the court. All process in admiralty causes and proceedings shall be made returnable at Buffalo. The judge of any district in the State of New York may perform the duties of the judge of any other district in such State upon the request of any resident judge entered in the minutes of his court; and in such cases such judge shall have the same powers as are vested in the resident judge.

SEC. 98. The State of North Carolina is divided into two districts, to be known as the eastern and western districts of North Carolina. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Beaufort, Bertie,

Bladen, Brunswick, Camden, Chatham, Cumberland, Currituck, Craven, Columbus, Chowan, Carteret, Dare, Duplin, Durham, Edgecomb, Franklin, Gates, Granville, Greene, Halifax, Harnett, Hertford, Hyde, Johnston, Jones, Lenoir, Lee, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Robeson, Richmond, Sampson, Scotland, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson. Terms of the district court for the eastern district shall be held at Elizabeth City on the second Mondays in April and October; at Washington on the third Mondays in April and October; at Newbern on the fourth Mondays in April and October; at Wilmington on the second Monday after the fourth Mondays in April and October; and at Raleigh on the fourth Monday after the fourth Mondays in April and October: *Provided,* That the city of Washington shall provide and furnish at its own expense a suitable and convenient place for holding the district court at Washington until a courthouse shall be constructed by the United States. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Raleigh, at Wilmington, at Newbern, at Elizabeth City, and at Washington, which shall be kept open at all times for the transaction of the business of the court. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alamance, Alexander, Ashe, Alleghany, Anson, Buncombe, Burke, Caswell, Cabarrus, Catawba, Cleveland, Caldwell, Clay, Cherokee, Davidson, Davie, Forsyth, Guilford, Gaston, Graham, Henderson, Haywood, Iredell, Jackson, Lincoln, Montgomery, Mecklenburg, Mitchell, McDowell, Madison, Macon, Orange, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanley, Stokes, Surry, Swain, Transylvania, Union, Wilkes, Watauga, Yadkin, and Yancey. Terms of the district court for the western district shall be held at Greensboro on the first Mondays in June and December; at Statesville on the third Mondays in April and October; at Salisbury on the fourth Mondays in April and October; at Asheville on the first Mondays in May and November; at Charlotte on the first Mondays in April and October; and at Wilkesboro on the fourth Mondays in May and November. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Greensboro, at Asheville, at Statesville, and at Wilkesboro, which shall be kept open at all times for the transaction of the business of the court.

SEC. 99. The State of North Dakota shall constitute one judicial district, to be known as the district of North Dakota. The territory embraced on the first day of July, nineteen hundred and ten, in the

counties of Burleigh, Stutsman, Logan, McIntosh, Emmons, Kidder, Foster, Wells, McLean, and Sheridan, and all the territory in said State lying west of the Missouri River and south of the twelfth standard parallel, shall constitute the southwestern division of said district; and the territory embraced on the date last mentioned in the counties of Cass, Richland, Barnes, Dickey, Sargent, Lamoure, Ransom, Griggs, and Steele, shall constitute the southeastern division; and the territory embraced on the date last mentioned in the counties of Grand Forks, Traill, Walsh, Pembina, Cavalier, and Nelson, shall constitute the northeastern division; and the territory embraced on the date last mentioned in the counties of Ramsey, Eddy, Benson, Towner, Rolette, Bottineau, Pierce, and McHenry, shall constitute the northwestern division; and the territory embraced on the date last mentioned in the counties of Ward, Williams, and Montraille, and all the territory in said State lying west of the Missouri River and north of the twelfth standard parallel, shall constitute the western division. The several Indian reservations and parts thereof within said State shall constitute a part of the several divisions within which they are respectively situated. Terms of the district court for the southwestern division shall be held at Bismarck on the first Tuesday in March; for the southeastern division, at Fargo on the third Tuesday in May; for the northeastern division, at Grand Forks on the second Tuesday in November; for the northwestern division, at Devils Lake on the first Tuesday in July; and for the western division, at Minot on the second Tuesday in October. The clerk of the court shall maintain an office in charge of himself or a deputy at each place at which court is now held in his district.

SEC. 100. The State of Ohio is divided into two judicial districts, to be known as the northern and southern districts of Ohio. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Ashland, Ashtabula, Cuyahoga, Carroll, Columbiana, Crawford, Geauga, Holmes, Lake, Lorain, Medina, Mahoning, Portage, Richland, Summit, Stark, Tuscarawas, Trumbull, and Wayne, which shall constitute the eastern division; also the territory embraced on the date last mentioned in the counties of Auglaize, Allen, Defiance, Erie, Fulton, Henry, Hancock, Hardin, Huron, Lucas, Mercer, Marion, Ottawa, Paulding, Putnam, Seneca, Sandusky, Van Wert, Williams, Wood, and Wyandotte, which shall constitute the western division of said district. Terms of the district court for the eastern division shall be held at Cleveland on the first Tuesdays in February, April, and October, and at Youngstown on the first Tuesday after the first Monday in March; and for the western division, at

Toledo on the last Tuesdays in April and October. Grand and petit jurors summoned for service at a term of court to be held at Cleveland may, if in the opinion of the court the public convenience so requires, be directed to serve also at the term then being held or authorized to be held at Youngstown. Crimes and offenses committed in the eastern division shall be cognizable at the terms held at Cleveland, or at Youngstown, as the court may direct. Any suit brought in the eastern division may, in the discretion of the court, be tried at the term held at Youngstown. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Lawrence, Miami, Montgomery, Preble, Scioto, Shelby, and Warren, which shall constitute the western division; also the territory embraced on the date last mentioned in the counties of Athens, Belmont, Coshocton, Delaware, Fairfield, Fayette, Franklin, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Knox, Licking, Logan, Madison, Meigs, Monroe, Morgan, Morrow, Muskingum, Noble, Perry, Pickaway, Pike, Ross, Union, Vinton, and Washington, which shall constitute the eastern division of said district. Terms of the district court for the western division shall be held at Cincinnati on the first Tuesdays in February, April, and October; and for the eastern division, at Columbus on the first Tuesdays in June and December: *Provided,* That terms of the district court for the southern district shall be held at Dayton on the first Mondays in May and November. Prosecutions for crimes and offenses committed in any part of said district shall also be cognizable at the terms held at Dayton. All suits which may be brought within the southern district, or either division thereof, may be instituted, tried, and determined at the terms held at Dayton.

SEC. 101. The State of Oklahoma is divided into two judicial districts, to be known as the eastern and the western districts of Oklahoma. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adair, Atoka, Bryan, Craig, Cherokee, Creek, Choctaw, Coal, Carter, Delaware, Garvin, Grady, Haskell, Hughes, Johnston, Jefferson, Latimer, Le Flore, Love, McClain, Mayes, Muskogee, McIntosh, McCurtain, Murray, Marshall, Nowata, Ottawa, Okmulgee, Ofuskee, Pittsburg, Pushmataha, Pontotoc, Rogers, Stephens, Sequoyah, Seminole, Tulsa, Washington, and Wagoner. Terms of the district court for the eastern district shall be held at Muskogee on the first Monday in January; at Vinita on the first Monday in March; at Tulsa on the first Monday in April; at South McAlester on the first Monday in June; at Ardmore on the first Mon-

day in October; and at Chickasha on the first Monday in November in each year. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Alfalfa, Beaver, Beckham, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Majors, Noble, Oklahoma, Osage, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods, and Woodward. Terms of the district court for the district shall be held at Guthrie on the first Monday in January; at Oklahoma City on the first Monday in March; at Enid on the first Monday in June; at Lawton on the first Monday in September; and at Woodward on the first Monday in November: *Provided,* That suitable rooms and accommodations for holding court at Woodward are furnished free of expense to the United States. The clerk of the district court for the eastern district shall keep his office at Muskogee, and the clerk for the western district at Guthrie, and shall maintain an office in charge of himself or a deputy at Oklahoma City.

SEC. 102. The State of Oregon shall constitute one judicial district, to be known as the district of Oregon. Terms of the district court shall be held at Portland on the first Mondays in March, July, and November; at Pendleton on the first Tuesday in April; and at Medford on the first Tuesday in October. The marshal and the clerk for said district shall each appoint, in the manner provided by law, at least one deputy at Pendleton and one at Medford, who shall reside and maintain an office at each of said places.

SEC. 103. The State of Pennsylvania is divided into three judicial districts, to be known as the eastern, middle, and western districts of Pennsylvania. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, Philadelphia, and Schuylkill. Terms of the district court shall be held at Philadelphia on the second Mondays in March and June, the third Monday in September, and the second Monday in December, each term to continue until the succeeding term begins. The middle district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Bradford, Cameron, Carbon, Center, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lebanon, Luzerne, Lycoming, Mifflin, Monroe, Montour, Northumberland, Perry, Pike, Potter, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York. Terms of the district court shall be held at Scranton on the fourth Monday in

February and the third Monday in October; at Harrisburg on the first Mondays in May and December; and at Williamsport on the second Mondays in January and June. The clerk of the court for the middle district shall maintain an office in charge of himself or a deputy at Harrisburg; and civil suits instituted at that place shall be tried there, if either party resides nearest that place of holding court, unless by consent of parties they are removed to another place for trial. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland. Terms of the district court shall be held at Pittsburg on the first Monday in May and the third Monday in October; and at Erie on the third Monday in July and the second Monday in January.

SEC. 104. The State of Rhode Island shall constitute one judicial district, to be known as the district of Rhode Island. Terms of the district court shall be held at Providence on the fourth Tuesday in May and the third Tuesday in November; and at Newport on the second Tuesday in May and the third Tuesday in October.

SEC. 105. The State of South Carolina is divided into two districts, to be known as the eastern and western districts of South Carolina. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Lancaster, Laurens, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, and York. Terms of the district court for the western district shall be held at Greenville on the third Tuesdays in April and October. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Aiken, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Hampton, Horry, Kershaw, Lee, Lexington, Marion, Marlboro, Orangeburg, Richland, Sumter, and Williamsburg. Terms of the district court for the eastern district shall be held at Charleston on the first Tuesdays in June and December; at Columbia on the third Tuesday in January and the first Tuesday in November, the latter term to be solely for the trial of civil cases; and at Florence on the first Tuesday in March. The offices of the clerk of the district court shall be at Greenville, and at Charleston; and the clerk shall reside in one of said cities and have a deputy in the other.

SEC. 106. The State of South Dakota shall constitute one judicial

district, to be known as the district of South Dakota. The territory embraced on the first day of July, nineteen hundred and ten, in the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Gregory, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton, and in the Yankton Indian reservation, shall constitute the southern division of said district; the territory embraced on the date last mentioned in the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Schnasse, Spink, and Walworth, and in the Sisseton and Wahpeton Indian reservation, and in that portion of the Standing Rock Indian reservation lying in South Dakota, shall constitute the northern division; the territory embraced on the date last mentioned in the counties of Armstrong, Buffalo, Dewey, Faulk, Hand, Hughes, Hyde, Jerauld, Lyman, Potter, Stanley, and Sully, and in the Cheyenne River, Lower Brule, and Crow Creek Indian reservations, shall constitute the central division; and the territory embraced on the date last mentioned in the counties of Bennett, Butte, Custer, Fall River, Harding, Lawrence, Meade, Mellette, Pennington, Perkins, Shannon, Todd, Tripp, Washabaugh, and Washington, and in the Rosebud and Pine Ridge Indian reservations, shall constitute the western division. Terms of the district court for the southern division shall be held at Sioux Falls on the first Tuesday in April and the third Tuesday in October; for the northern division, at Aberdeen on the first Tuesday in May and the second Tuesday in November; for the central division, at Pierre on the second Tuesday in June and the first Tuesday in October; and for the western division, at Deadwood on the third Tuesday in May and the first Tuesday in September. The clerk of the district court shall maintain an office in charge of himself or a deputy at Sioux Falls, at Pierre, at Aberdeen, and at Deadwood, which shall be kept open for the transaction of the business of the court.

SEC. 107. The State of Tennessee is divided into three districts, to be known as the eastern, middle, and western districts of Tennessee. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bledsoe, Bradley, Hamilton, James, McMinn, Marion, Meigs, Polk, Rhea, and Sequatchie, which shall constitute the southern division of said district; also the territory embraced on the date last mentioned in the counties of Anderson, Blount, Campbell, Claiborne, Grainger, Jefferson, Knox, Loudon, Monroe, Morgan, Roane, Sevier, Scott, and Union, which shall constitute the northern division of said district; also the territory embraced on the

date last mentioned in the counties of Carter, Cocke, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington, which shall constitute the northeastern division of said district. Terms of the district court for the southern division of said district shall be held at Chattanooga on the fourth Mondays in May and November; for the northern division, at Knoxville on the first Mondays in January and July; and for the northeastern division, at Greenville on the last Mondays in March and September. The middle district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Grundy, Hickman, Humphreys, Houston, Lawrence, Lewis, Lincoln, Marshall, Maury, Montgomery, Moore, Robertson, Rutherford, Stewart, Sumner, Trousdale, Warren, Wayne, Williamson, and Wilson, which shall constitute the Nashville division of said district; also the territory embraced on the date last mentioned in the counties of Clay, Cumberland, DeKalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Van Buren, and White, which shall constitute the northeastern division of said district. Terms of the district court for the Nashville division of said district shall be held at Nashville on the second Mondays in April and October; and for the northeastern division, at Cookeville on the second Mondays in May and November: *Provided,* That suitable accommodations for holding court at Cookeville shall be provided by the county or municipal authorities without expense to the United States. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Dyer, Fayette, Haywood, Lauderdale, Shelby, and Tipton, which shall constitute the western division of said district; also the territory embraced on the date last mentioned in the counties of Benton, Carroll, Chester, Crockett, Decatur, Gibson, Hardeman, Hardin, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry, and Weakley, including the waters of the Tennessee River to low water mark on the eastern shore thereof wherever such river forms the boundary line between the western and middle districts of Tennessee, from the north line of the State of Alabama north to the point in Henry County, Tennessee, where the south boundary line of the State of Kentucky strikes the west bank of the river, which shall constitute the eastern division of said district. Terms of the district court for the western division of said district shall be held at Memphis on the fourth Mondays in May and November; and for the eastern division, at Jackson on the fourth Mondays in April and October. The clerk of the court for the western district shall appoint a deputy who shall reside at

Jackson. The marshal for the western district shall appoint a deputy who shall reside at Jackson. The marshal for the eastern district shall appoint a deputy who shall reside at Chattanooga. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Knoxville, at Chattanooga, and at Greeneville, which shall be kept open at all times for the transaction of the business of the court.

SEC. 108. The State of Texas is divided into four districts, to be known as the northern, eastern, western, and southern districts of Texas. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Dallas, Ellis, Hunt, Johnson, Kaufman, Navarro, and Rockwall, which shall constitute the Dallas division; also the territory embraced on the date last mentioned in the counties of Archer, Baylor, Clay, Comanche, Erath, Foard, Hardeman, Hood, Jack, Palo Pinto, Parker, Tarrant, Wichita, Wilbarger, Wise, and Young, which shall constitute the Fort Worth division; also the territory embraced on the date last mentioned in the counties of Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, King, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, which shall constitute the Amarillo division; also the territory embraced on the date last mentioned in the counties of Andrews, Borden, Callahan, Dawson, Eastland, Fisher, Gaines, Garza, Haskell, Howard, Jones, Kent, Knox, Lynn, Martin, Midland, Mitchell, Nolan, Scurry, Shackelford, Stephens, Stonewall, Taylor, Terry, Throckmorton, and Yoakum, which shall constitute the Abilene division; also the territory embraced on the date last mentioned in the counties of Brown, Coke, Coleman, Concho, Crockett, Glasscock, Irion, Menard, Mills, Runnels, Schleicher, Sterling, Sutton, Tom Green, and Upton, which shall constitute the San Angelo division of the said district. Terms of the district court for the Dallas division shall be held at Dallas on the second Monday in January and the first Monday in May; for the Fort Worth division, at Fort Worth on the first Monday in November and the second Monday in March; for the Amarillo division, at Amarillo on the third Monday in April and the fourth Monday in September; for the Abilene division, at Abilene on the first Monday in October and the second Monday in April; and for the San Angelo division, at San Angelo on the third Monday in October and the fourth Monday in April. The clerk of the court for the northern district shall maintain an office in charge of himself or a deputy at Dallas,

at Fort Worth, at Amarillo, at Abilene, and at San Angelo, which shall be kept open at all times for the transaction of the business of the court. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Anderson, Angelina, Cherokee, Gregg, Henderson, Houston, Nacogdoches, Panola, Rains, Rusk, Smith, Van Zandt, and Wood, which shall constitute the Tyler division; also the territory embraced on the date last mentioned in the counties of Hardin, Jasper, Jefferson, Liberty, Newton, Orange, Sabine, San Augustine, Shelby, and Tyler, which shall constitute the Beaumont division; also the territory embraced on the date last mentioned in the counties of Collin, Cook, Denton, Grayson, and Montague, which shall constitute the Sherman division; also the territory embraced on the date last mentioned in the counties of Camp, Cass, Harrison, Hopkins, Marion, Morris and Upshur, which shall constitute the Jefferson division; also the territory embraced on the date last mentioned in the counties of Delta, Fannin, Red River, and Lamar, which shall constitute the Paris division; also the territory embraced on the date last mentioned in the counties of Bowie, Franklin, and Titus, which shall constitute the Texarkana division. Terms of the district court for the Tyler division shall be held at Tyler on the fourth Mondays in January and April; for the Jefferson division, at Jefferson on the first Monday in October and the third Monday in February; for the Beaumont division, at Beaumont on the third Monday in November and the first Monday in April; for the Sherman division, at Sherman on the first Monday in January and the third Monday in May; for the Paris division, at Paris on the third Monday in October and the first Monday in March; and for the Texarkana division, at Texarkana on the third Monday in March and the first Monday in November. The clerk of the court for the eastern district shall maintain an office in charge of himself or a deputy at Sherman, at Beaumont, and at Texarkana, which shall be kept open at all times for the transaction of the business of said court. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington and Williamson, which shall constitute the Austin division; also the territory embraced on the date last mentioned in the counties of Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, and Wilson, which shall constitute the San Antonio division; also the territory embraced on the date last mentioned in the counties of Brewster, Crane, Ector, El Paso, Jeff Davis, Loving, Reeves, Presidio, Ward, and Winkler,

which shall constitute the El Paso division; also the territory embraced on the date last mentioned in the counties of Bell, Bosque, Coryell, Falls, Hamilton, Freestone, Hill, Leon, Limestone, McLennan, Milam, Robertson, and Somervell, which shall constitute the Waco division; also the territory embraced on the date last mentioned in the counties of Kinney, Maverick, Pecos, Terrell, Uvalde, Valverde, and Zavalla, which shall constitute the Del Rio division. Terms of the district court for the Austin division shall be held at Austin on the fourth Monday in January and the second Monday in June; for the Waco division, at Waco on the fourth Monday in February and the second Monday in November; for the San Antonio division, at San Antonio on the first Monday in May and the third Monday in December; for the El Paso division, at El Paso on the first Monday in April and the first Monday in October; and for the Del Rio division, at Del Rio on the third Monday in March and the fourth Monday in October. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Austin, El Paso, and at Del Rio, which shall be kept open at all times for the transaction of business. The southern district shall include the territory embraced on the first of July, nineteen hundred and ten, in the counties of Duval, La Salle, McMullen, Nueces, Webb, and Zapata, which shall constitute the Laredo division; also the territory embraced on the date last mentioned in the counties of Cameron, Hidalgo, and Starr, which shall constitute the Brownsville division; also the territory embraced on the date last mentioned in the counties of Austin, Brazoria, Chambers, Galveston, Fort Bend, Matagorda, and Wharton, which shall constitute the Galveston division; also the territory embraced on the date last mentioned in the counties of Brazos, Colorado, Fayette, Grimes, Harris, Lavaca, Madison, Montgomery, Polk, San Jacinto, Trinity, Walker, and Waller, which shall constitute the Houston division; also the territory embraced on the date last mentioned in the counties of Bee, Calhoun, Dewitt, Goliad, Jackson, Live Oak, Refugio, Aransas, San Patricio, and Victoria, which shall constitute the Victoria division. Terms of the district court for the Galveston division shall be held at Galveston on the second Monday in January and the first Monday in June; for the Houston division, at Houston on the fourth Mondays in February and September; for the Laredo division, at Laredo on the third Monday in April and the second Monday in November; for the Brownsville division, at Brownsville on the second Monday in May and the first Monday in December; and for the Victoria division, at Victoria on the first Monday in May and the fourth Monday in November. The clerk of the court for the southern district shall maintain an office in charge

of himself or a deputy at each of the places now designated for holding court in said district.

SEC. 109. The State of Utah shall constitute one judicial district, to be known as the district of Utah. It is divided into two divisions, to be known as the northern and central divisions. The northern division shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Boxelder, Cache, Davis, Morgan, Rich, and Weber. The central division shall include the territory embraced on the date last mentioned in the counties of Beaver, Carbon, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Piute, Salt Lake, San Juan, San Pete, Sevier, Summit, Tooele, Uinta, Utah, Wasatch, Washington, and Wayne. Terms of the district court for the northern division shall be held at Ogden on the second Mondays in March and September; and for the central division, at Salt Lake City on the second Mondays in April and November. The clerk of the court for said district shall maintain an office in charge of himself or a deputy at each of the places where the court is now required to be held in the district.

SEC. 110. The State of Vermont shall constitute one judicial district, to be known as the district of Vermont. Terms of the district court shall be held at Burlington on the fourth Tuesday in February; at Windsor on the third Tuesday in May; and at Rutland on the first Tuesday in October. In each year one of the stated terms of the district court may, when adjourned, be adjourned to meet at Montpelier, and one at Newport.

SEC. 111. The State of Virginia is divided into two districts, to be known as the easteren and western districts of Virginia. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Accomac, Alexandria, Amelia, Brunswick, Caroline, Charles City, Chesterfield, Culpeper, Dinwiddie, Elizabeth City, Essex, Fairfax, Fauquier, Gloucester, Goochland, Greensville, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenberg, Mathews, Mecklenburg, Middlesex, Nansemond, New Kent, Norfolk, Northampton, Northumberland, Nottoway, Orange, Powhatan, Prince Edward, Prince George, Prince William, Princess Anne, Richmond, Southampton, Spottsylvania, Stafford, Surry, Sussex, Warwick, Westmoreland, and York. Terms of the district court shall be held at Richmond on the first Mondays in April and October; at Norfolk on the first Mondays in May and November; and at Alexandria on the first Mondays in January and July. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the coun-

ties of Alleghany, Albemarle, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Buckingham, Campbell, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Floyd, Fluvanna, Franklin, Frederick, Giles, Grayson, Greene, Halifax, Henry, Highland, Lee, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Pittsylvania, Rappahannock, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Tazewell, Warren, Washington, Wise, and Wythe. Terms of the district court shall be held at Lynchburg on the Tuesdays after the second Mondays in March and September; at Danville on the Tuesdays after the second Mondays in April and November; at Abingdon on the Tuesdays after the first Mondays in May and October; at Harrisonburg on the Tuesdays after the first Mondays in June and December; at Charlottesville on the second Monday in January and the first Monday in July; at Roanoke on the third Monday in February and the third Monday in June; and at Big Stone Gap on the fourth Monday in January and the second Monday in August. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Lynchburg, at Danville, at Charlottesville, at Roanoke, at Abingdon, and at Big Stone Gap, which shall be kept open at all times for the transaction of the business of the court.

SEC. 112. The State of Washington is divided into two districts, to be known as the eastern and western districts of Washington. The eastern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Spokane, Stevens, Ferry, Okanogan, Chelan, Grant, Douglas, Lincoln, and Adams, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Asotin, Garfield, Whitman, Columbia, Franklin, Walla Walla, Benton, Klickitat, Kittitas, and Yakima, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Spokane on the first Tuesdays in April and September; for the southern division, at Walla Walla on the first Tuesdays in June and December, and at North Yakima on the first Tuesdays in May and October. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Whatcom, Skagit, Snohomish, King, San Juan, Island, Kitsap, Clallam, and Jefferson, with the waters thereof, including all Indian reservations within said counties, which shall constitute the northern division; also the territory embraced on the date last mentioned in the counties of Pierce, Mason, Thurston,

Chehalis, Pacific, Lewis, Wahkiakum, Cowlitz, Clarke, and Skamania, with the waters thereof, including all Indian reservations within said counties, which shall constitute the southern division of said district. Terms of the district court for the northern division shall be held at Bellingham on the first Tuesdays in April and October; at Seattle on the first Tuesdays in May and November; and for the southern division, at Tacoma on the first Tuesdays in February and July. The clerks of the courts for the eastern and western districts shall maintain an office in charge of himself or a deputy at each place in their respective districts where terms of court are now required to be held.

SEC. 113. The State of West Virginia is divided into two districts, to be known as the northern and southern districts of West Virginia. The northern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Hancock, Brooke, Ohio, Marshall, Tyler, Pleasants, Wood, Wirt, Ritchie, Doddridge, Wetzel, Monongalia, Marion, Harrison, Lewis, Gilmer, Calhoun, Upshur, Barbour, Taylor, Preston, Tucker, Randolph, Pendleton, Hardy, Grant, Mineral, Hampshire, Morgan, Berkeley, and Jefferson, with the waters thereof. Terms of the district court for the northern district shall be held at Martinsburg, the first Tuesday of April and the third Tuesday of September; at Clarksburg, the second Tuesday of April and the first Tuesday of October; at Wheeling, the first Tuesday of May and the third Tuesday of October; at Philippi, the fourth Tuesday of May and first Tuesday of November; at Parkersburg, the second Tuesday of January and second Tuesday of June: *Provided,* That a place for holding court at Philippi shall be furnished the Government free of cost by Barbour County until other provision is made therefor by law. The southern district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Jackson, Roane, Clay, Braxton, Webster, Nicholas, Pocahontas, Greenbrier, Fayette, Boone, Kanawha, Putnam, Mason, Cabell, Wayne, Lincoln, Logan, Mingo, Raleigh, Wyoming, McDowell, Mercer, Summers, and Monroe, with the waters thereof. Terms of the district court for the southern district shall be held at Charleston on the first Tuesday in June and the third Tuesday in November; at Huntington, on the first Tuesday in April and the first Tuesday after the third Monday in September; at Bluefield, on the first Tuesday in May and the third Tuesday in October; at Addison, on the first Monday in September; and at Lewisburg, on the second Tuesday in February: *Provided,* That accommodations for holding court at Addison shall be furnished without cost to the United States.

SEC. 114. The State of Wisconsin is divided into two districts, to

be known as the eastern and western districts of Wisconsin. The eastern districts shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Milwaukee, Oconto, Outagamie, Ozaukee, Racine, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago. Terms of the district court for said district shall be held at Milwaukee on the first Mondays in January and October; at Oshkosh on the second Tuesday in June; and at Green Bay on the first Tuesday in April. The western district shall include the territory embraced on the first day of July, nineteen hundred and ten, in the counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Columbia, Crawford, Dane, Dunn, Douglas, Eau Claire, Grant, Green, Iowa, Iron, Jackson, Jefferson, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Monroe, Oneida, Pepin, Pierce, Polk, Portage, Price, Richland, Rock, Rusk, Saint Croix, Sauk, Sawyer, Taylor, Trempealeau, Vernon, Vilas, Washburn, and Wood. Terms of the district court for said district shall be held at Madison on the first Tuesday in December; at Eau Claire on the first Tuesday in June; at La Crosse on the third Tuesday in September; and at Superior on the fourth Tuesday in January and the second Tuesday in July. The district court for each of said districts shall be open at all times for the purpose of hearing and deciding causes of admiralty and maritime jurisdiction, so far as the same can be done without a jury. The clerk of the court for the western district shall maintain an office in charge of himself or a deputy at Madison, at La Crosse, and at Superior, which shall be kept open at all times for the transaction of the business of the court. The marshal for the western district shall appoint a deputy marshal who shall reside and keep his office at Superior. All writs and other process, except criminal warrants, issued at Superior, may be made returnable at Superior; and the clerk at that place shall keep in his office the original records of all actions, prosecutions, and special proceedings so commenced and pending therein. Criminal warrants may be returned at any place within the district where court is held. Whenever warrants issued at Superior shall be returned at any other place, the clerk of the court wherein the warrant is returned, shall certify the same, under the seal of the court, together with the plea and other proceedings had thereon, and the determination of the court upon such plea or proceedings, with all papers and orders filed in reference thereto, to the clerk of the court at Superior; and the clerk at Superior shall enter upon his records a minute of the proceedings had upon the return of said warrant,

certified as aforesaid. All causes and proceedings instituted in the court at Superior, shall be tried therein, unless by consent of the parties, or upon the order of the court, they are transferred to another place for trial.

SEC. 115. The State of Wyoming and the Yellowstone National Park shall constitute one judicial district, to be known as the district of Wyoming. Terms of the district court for said district shall be held at Cheyenne on the second Mondays in May and November; at Evanston on the second Tuesday in July; and at Lander on the first Monday in October; and the said court shall hold one session annually at Sheridan, and in said national park, on such dates as the court may order. The marshal and clerk of the said court shall each, respectively, appoint at least one deputy to reside at Evanston, and one to reside at Lander, unless he himself shall reside there, and shall also maintain an office at each of those places: *Provided,* That until a public building is provided at Lander, suitable accommodations for holding court in said town shall be furnished the Government at an expense not to exceed three hundred dollars annually. The marshal of the United States for the said district may appoint one or more deputy marshals for the Yellowstone National Park, who shall reside in said park.

## CHAPTER SIX.

### CIRCUIT COURTS OF APPEALS.


Sec.
116. Circuits.
117. Circuit courts of appeals.
118. Circuit judges.
119. Allotment of justices to the circuits.
120. Chief justice and associate justices of Supreme Court, and district judges, may sit in circuit court of appeals.
121. Justices allotted to circuits, how designated.
122. Seals, forms of process, and rules.
123. Marshals.
124. Clerks.
125. Deputy clerks; appointment and removal.
126. Terms.
127. Rooms for court, how provided.
128. Jurisdiction; when judgment final.
129. Appeals in proceedings for injunctions and receivers.
130. Appellate and supervisory jurisdiction under the bankrupt act.
131. Appeals from the United States court for China.
132. Allowance of appeals, etc.
133. Writs of error and appeals from the supreme courts of Arizona and New Mexico.
134. Writs of error and appeals from district court for Alaska to circuit court of appeals for ninth circuit; court may certify questions to the Supreme Court.
135. Appeals and writs of error from Alaska; where heard.


SEC. 116. There shall be nine judicial circuits of the United States, constituted as follows:

First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, and Maine.

Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

Third. The third circuit shall include the districts of Pennsylvania, New Jersey, and Delaware.

Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Fifth. The fifth circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

Sixth. The sixth circuit shall include the districts of Ohio, Michigan, Kentucky, and Tennessee.

Seventh. The seventh circuit shall include the districts of Indiana, Illinois, and Wisconsin.

Eighth. The eighth circuit shall include the districts of Nebraska, Minnesota, Iowa, Missouri, Kansas, Arkansas, Colorado, Wyoming, North Dakota. South Dakota, Utah, and Oklahoma.

Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, and Hawaii.

Superseding § 604, R. S. U. S., 1 Comp. Stat. p. 485, 4 Fed. Stat. Ann. 59, Pierce, Code, § 7115. For earlier statutes defining the circuits, see Introduction, Title "The Earlier Judiciary Acts."

SEC. 117. There shall be in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record, with appellate jurisdiction, as hereinafter limited and established.

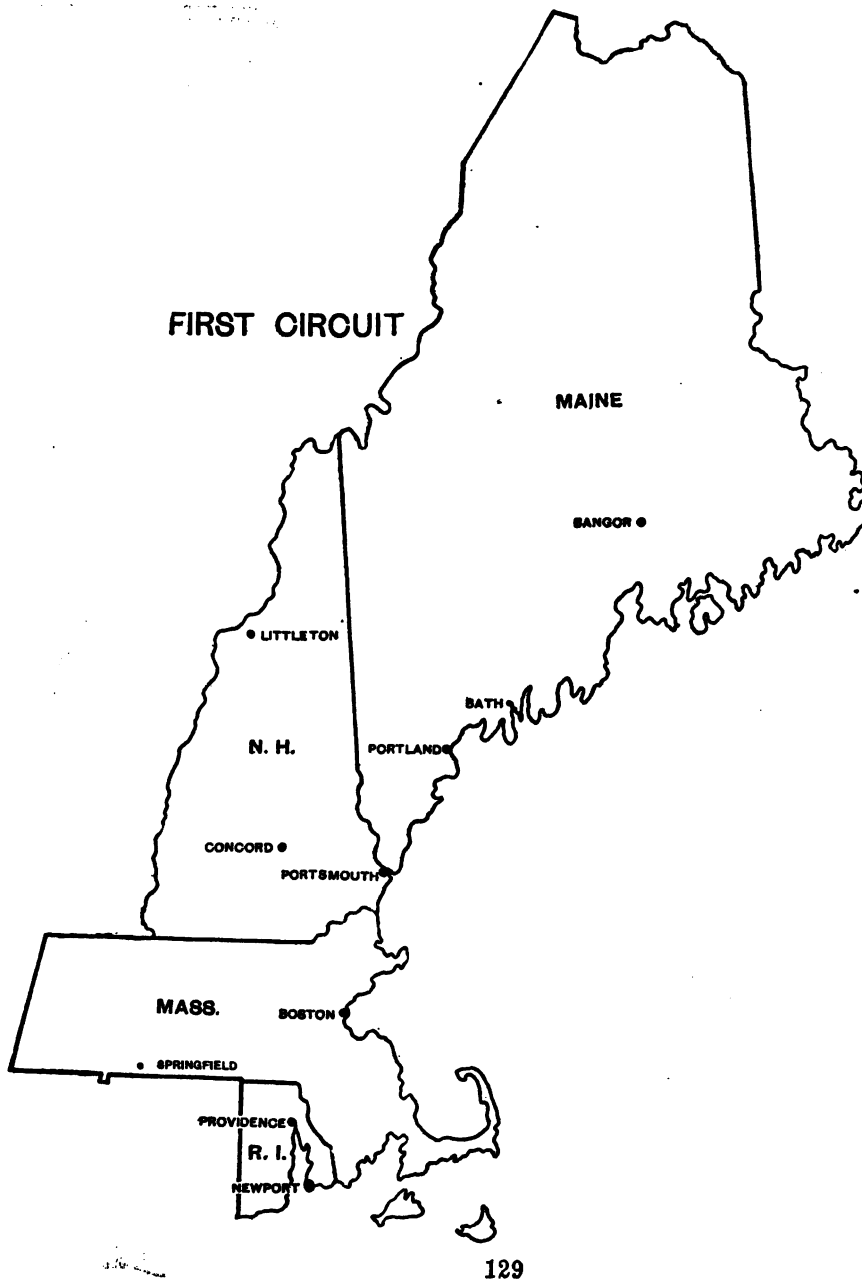
Superseding Act of March 3, 1891, § 2, 26 Stat. at L. 826, 4 Fed. Stat. Ann. 395, 1 Comp. Stat. p. 547, Pierce, Code § 7247.

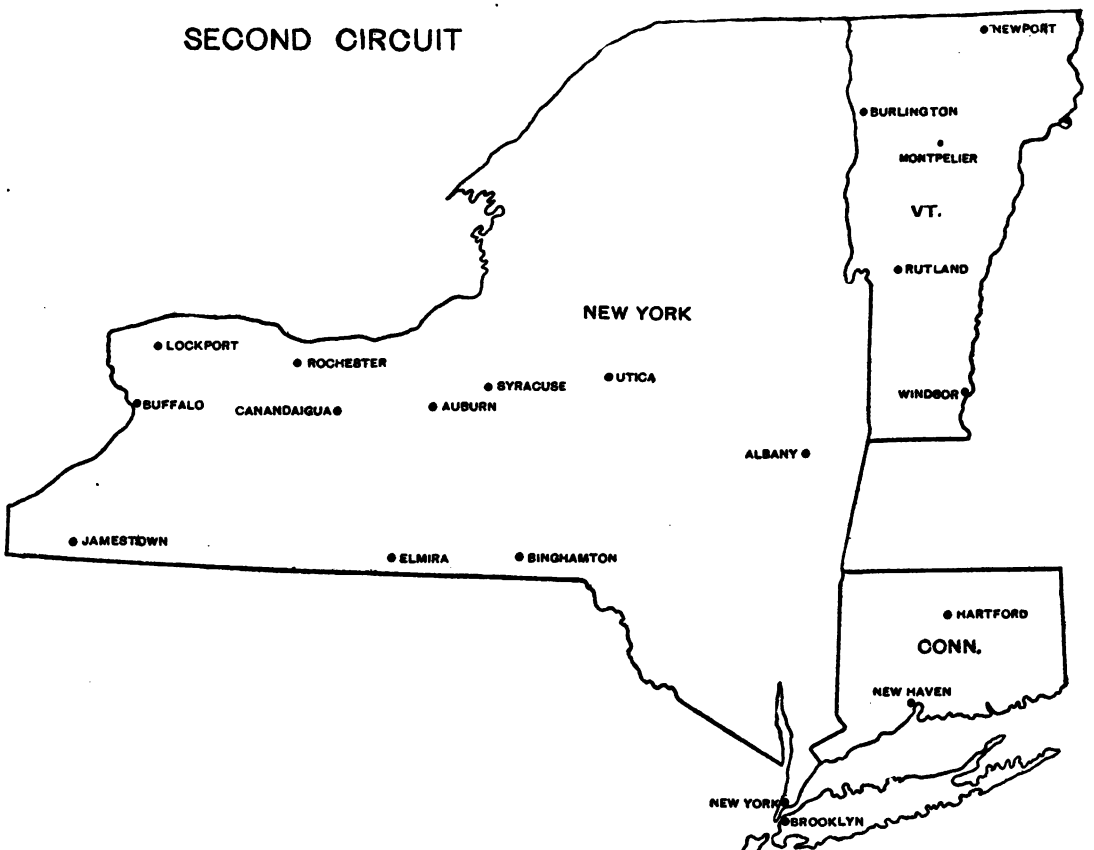
SEC. 118. There shall be in the second, seventh, and eighth circuits, respectively, four circuit judges, in the fourth circuit, two circuit judges, and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. They shall be entitled to receive a salary at the rate of seven thousand dollars a year, each, payable monthly. Each circuit judge shall reside within his circuit.

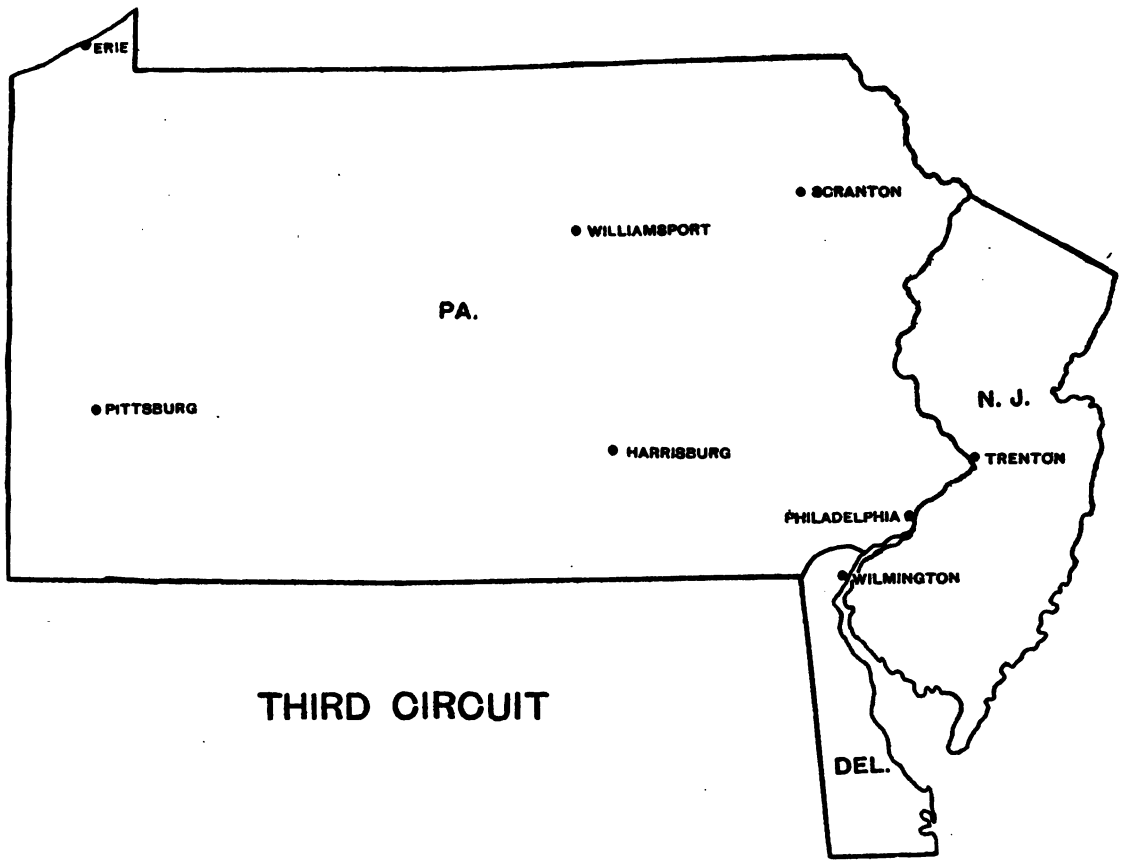
See the various Acts providing for additional judges in the circuits, in addition to the judge for each circuit provided by § 607, R. S. U. S., 1 Comp. Stat. 487.

As; Act of March 3, 1887, c. 347, 24 Stat. at L. 492; Act March 3, 1891, c. 517, § 1, 26 Stat. at L. 826.

SEC. 119. The Chief Justice and associate justices of the Supreme Court shall be allotted among the circuits by an order of the court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appointment of a Chief Justice or associate justice, or otherwise. If a new allotment

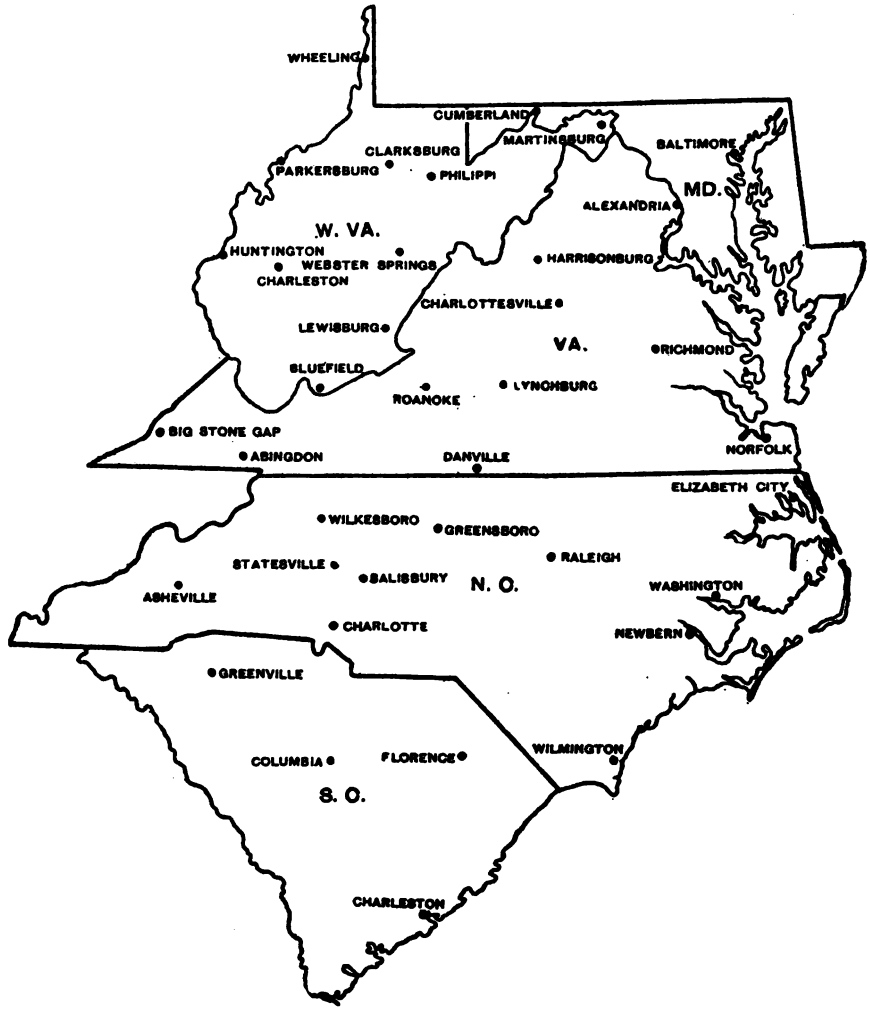

FIRST CIRCUIT
MAINE
BANGOR
LITTLETON
BATH
N. H.
PORTLAND
CONCORD
PORTSMOUTH
MASS.
BOSTON
SPRINGFIELD
PROVIDENCE
R. I.
NEWPORT


SECOND CIRCUIT
NEWPORT
BURLINGTON
MONTPELIER
VT.
RUTLAND
NEW YORK
LOCKPORT
ROCHESTER
SYRACUSE
UTICA
WINDSOR
BUFFALO
CANANDAIGUA
AUBURN
ALBANY
JAMESTOWN
ELMIRA
BINGHAMTON
HARTFORD
CONN.
NEW HAVEN
NEW YORK
BROOKLYN

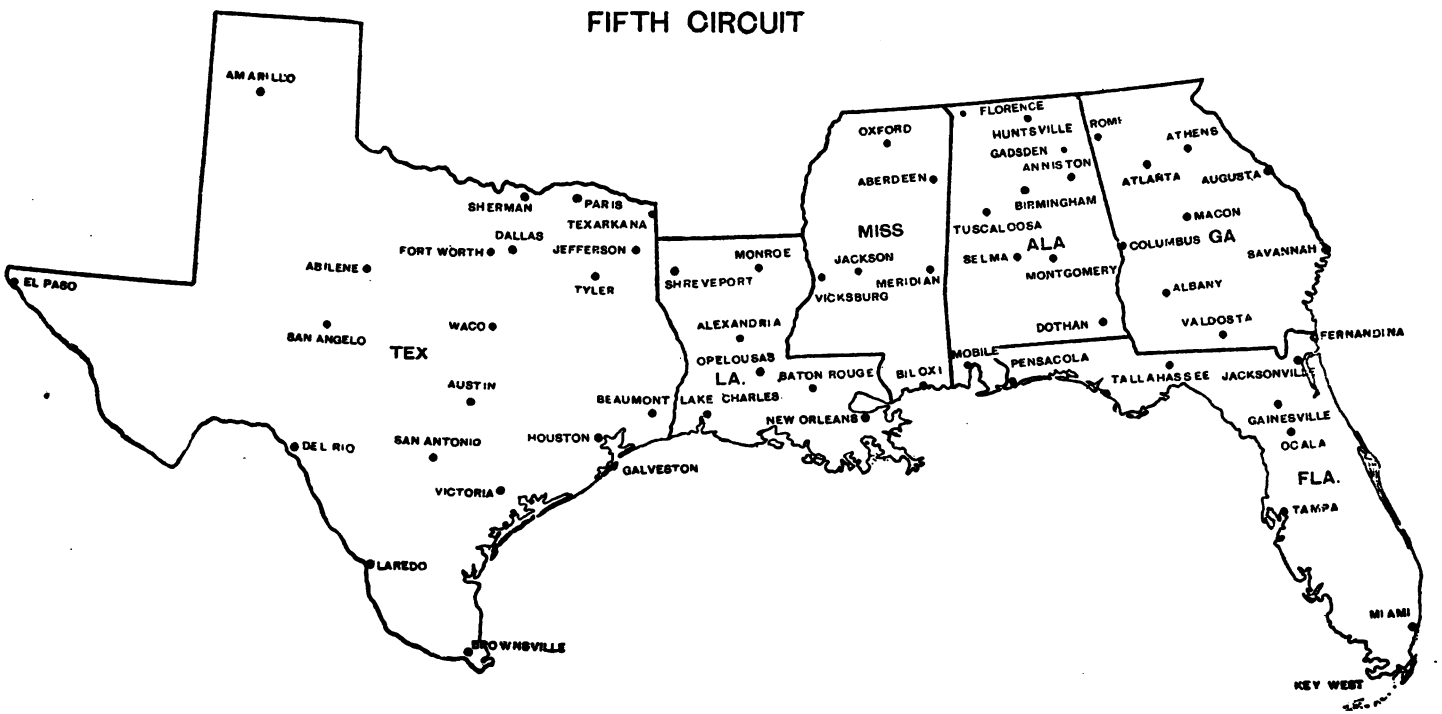



THIRD CIRCUIT

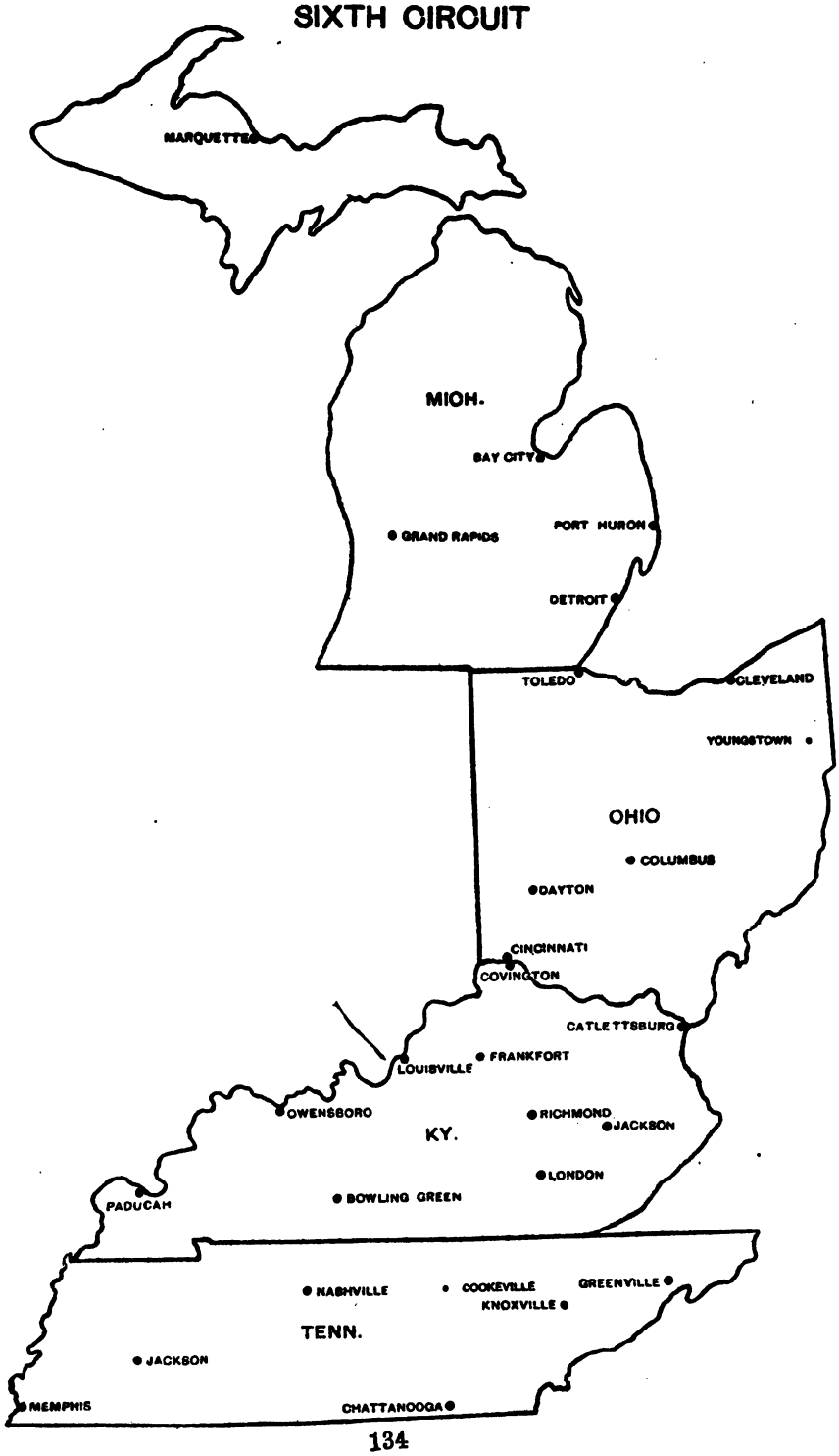
# FOURTH CIRCUIT



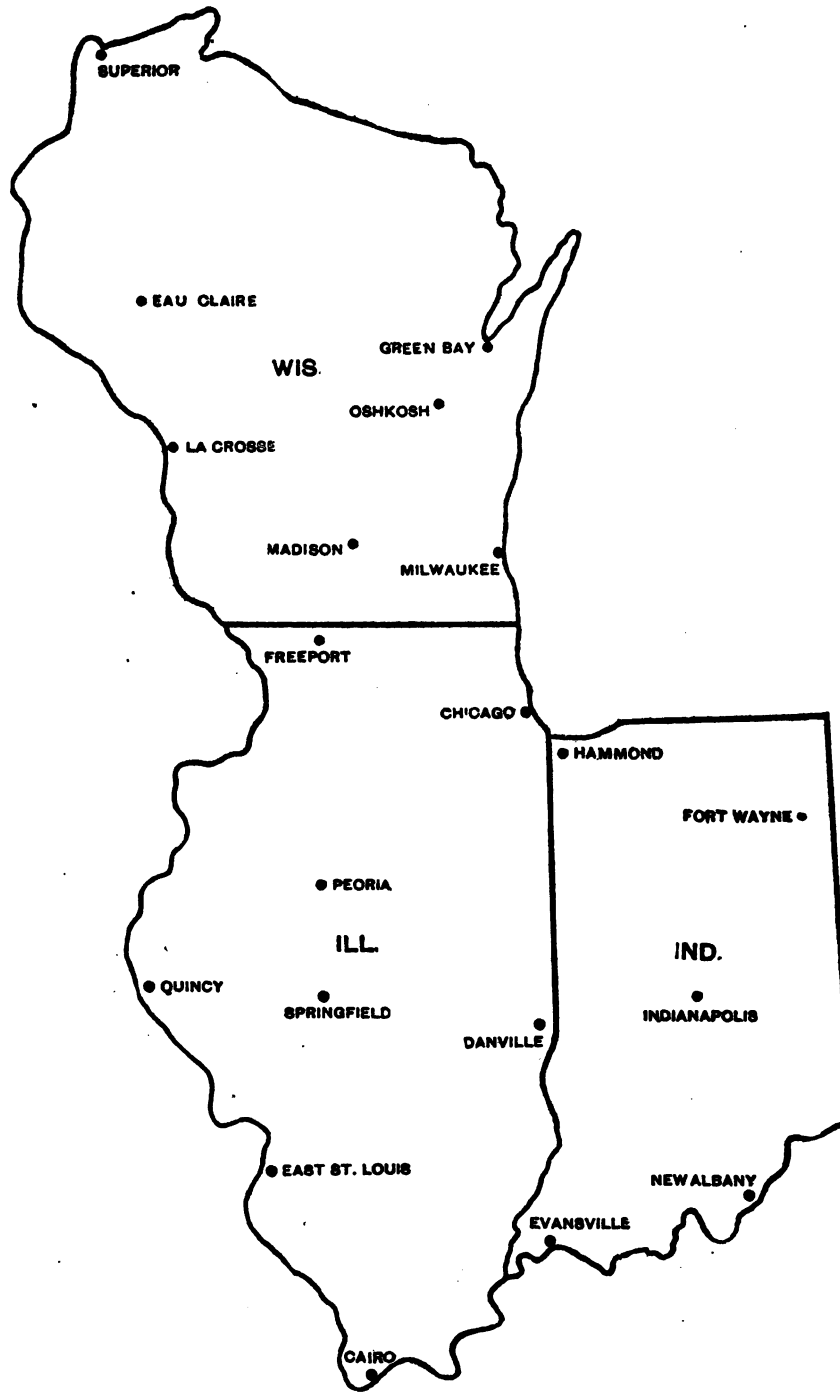
# FIFTH CIRCUIT



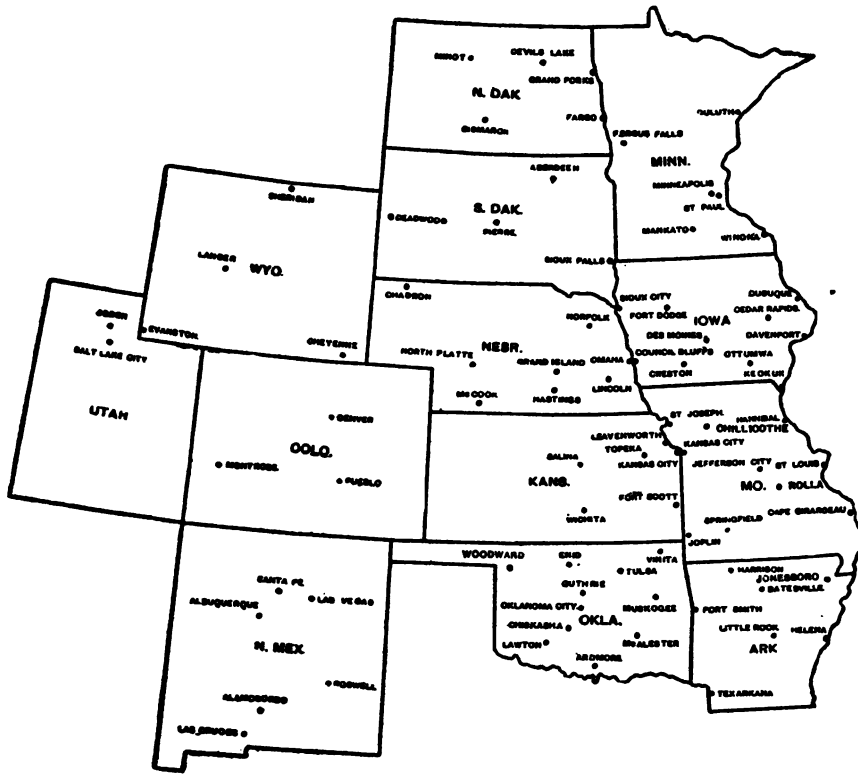
# SIXTH CIRCUIT



# SEVENTH CIRCUIT



## EIGHTH CIRCUIT



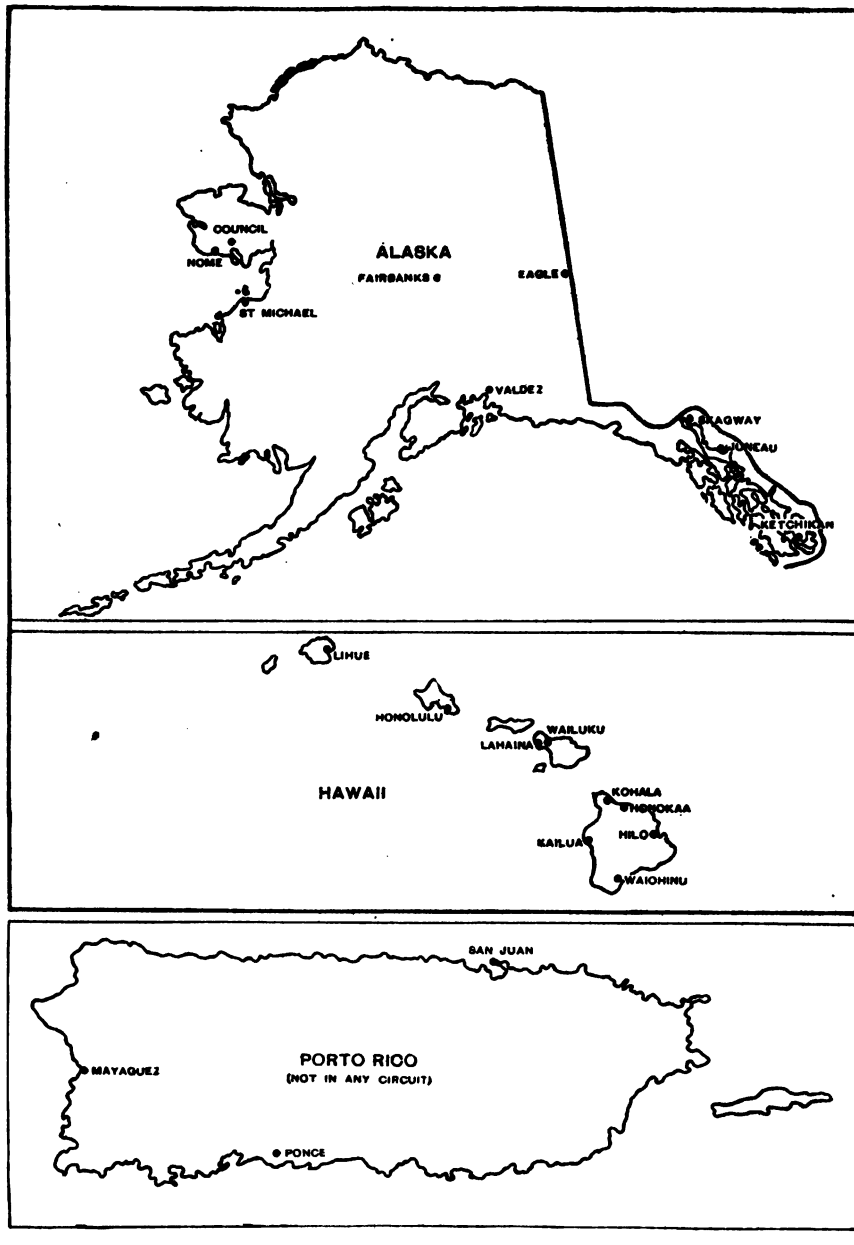
# NINTH CIRCUIT

(PART OF)



# NINTH CIRCUIT

(PART OF)



becomes necessary at any other time than during a term, it shall be made by the Chief Justice, and shall be binding until the next term and until a new allotment by the court. Whenever, by reason of death or resignation, no justice is allotted to a circuit, the Chief Justice may, until a justice is regularly allotted thereto, temporarily assign a justice of another circuit to such circuit.

See § 606 R. S. U. S., 1 Comp. Stat. p. 487, 4 Fed. Stat. Ann. p. 238, Pierce, Code § 7122.

SEC. 120. The Chief Justice and the associate justices of the Supreme Court assigned to each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits. In case the Chief Justice or an associate justice of the Supreme Court shall attend at any session of the circuit court of appeals, he shall preside. In the absence of such Chief Justice, or associate justice, the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions. In case the full court at any time shall not be made up by the attendance of the Chief Justice or the associate justice, and the circuit judges, one or more district judges within the circuit shall sit in the court according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court: *Provided,* That no judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals.

Based upon § 3, Act Feb. 19, 1897, 29 Stat. at L. 536, 4 Fed. Stat. Ann. 434, 1 Comp. Stat. 547, Pierce, Code § 7248.

SEC. 121. The words "circuit justice" and "justice of a circuit," when used in this title, shall be understood to designate the justice of the Supreme Court who is allotted to any circuit; but the word "judge," when applied generally to any circuit, shall be understood to include such justice.

Re-enacting § 605, R. S. U. S., 1 Comp. Stat. p. 486, 4 Fed. Stat. Ann. p. 59, Pierce, Code § 7121.

SEC. 122. Each of said circuit courts of appeals shall prescribe the form and style of its seal, and the form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction; and shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law.

See Act of March 3, 1891, c. 517 § 2, 26 Stat. at L. 826.

SEC. 123. The United States marshals in and for the several districts of said courts shall be the marshals of said circuit courts of appeals, and shall exercise the same powers and perform the same duties, under the regulations of the court, as are exercised and performed by the marshal of the Supreme Court of the United States, so far as the same may be applicable.

See Act of July 16, 1892, c. 196, § 1, 27 Stat. at L. p. 222, 1 Comp. Stat. p. 555.

SEC. 124. Each court shall appoint a clerk, who shall exercise the same powers and perform the same duties in regard to all matters within its jurisdiction, as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable.

See Act of March 3, 1891, c. 517, § 2; 26 Stat. at L. 826, 1 Comp. Stat. p. 547.

SEC. 125. The clerk of the circuit court of appeals for each circuit may, with the approval of the court, appoint such number of deputy clerks as the court may deem necessary. Such deputies may be removed at the pleasure of the clerk appointing them, with the approval of the court. In case of the death of the clerk his deputy or deputies shall, unless removed by the court, continue in office and perform the duties of the clerk in his name until a clerk is appointed and has qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable, and his executor or administrator shall have such remedy for such defaults or misfeasances committed after

his death as the clerk would be entitled to if the same had occurred in his lifetime.

Re-enacting § 558, R. S. U. S., 1 Comp. Stat. p. 453, 4 Fed. Stat. Ann. p. 74, Pierce, Code § 6989.

SEC. 126. A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places, and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond; in the fifth circuit, in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit, in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in Saint Louis, Denver or Cheyenne, and Saint Paul; in the ninth circuit, in San Francisco, and each year in two other places in said circuit to be designated by the judges of said court; and in each of the above circuits, terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate: *Provided,* That terms shall be held in Atlanta on the first Monday in October, in Fort Worth on the first Monday in November, in Montgomery on the third Monday in October, in Denver or in Cheyenne on the first Monday in September, and in St. Paul on the first Monday in May. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the State of Georgia, in the State of Texas, and in the State of Alabama, to the circuit court of appeals for he fifth judicial circuit shall be heard and disposed of, respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals or writs of error in cases of injunctions and in all other cases which, under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing may be heard and disposed of wherever said court may be sitting. All appeals, writs of errors, and other appellate proceedings which may hereafter be taken or prosecuted from the district court of the United States at Beaumont, Texas, to the circuit court of appeals for the fifth circuit, shall

be heard and disposed of by the said circuit court of appeals at the terms of court held at New Orleans: *Provided,* That nothing herein shall prevent the court from hearing appeals or writs of error wherever the said courts shall sit, in cases of injunctions and in all other cases which, under the statutes and the rules, or in the opinion of the court, are entitled to be brought to a speedy hearing. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the States of Colorado, Utah, and Wyoming, and the supreme court of the Territory of New Mexico to the circuit court of appeals for the eighth judicial circuit, shall be heard and disposed of by said court at the terms held either in Denver or in Cheyenne, except that any case arising in any of said States or Territory may, by consent of all the parties, be heard and disposed of at a term of said court other than the one held in Denver or Cheyenne.

(From the Register of the Department of Justice.)

TIMES AND PLACES OF HOLDING CIRCUIT COURTS OF APPEALS. First circuit: Annual term, first Tuesday in October; stated sessions, first Tuesday in every month; sessions for hearing cases, first Tuesday in January and October, and second Tuesday in April, at Boston, Mass.

Second circuit: Second Monday in October, at New York City.

Third circuit: First Tuesday in March and first Tuesday in October, at Philadelphia.

Fourth circuit: First Tuesday in February, first Tuesday in May, and first Tuesday in November, at Richmond, Va.

Fifth circuit: First Monday in October, at Atlanta, Ga.; third Monday in October, at Montgomery, Ala,; first Monday in November, at Fort Worth, Tex.; and third Monday in November, at New Orleans, La.

Sixth circuit: Tuesday after the first Monday of October, and adjourned sessions on the Tuesday after first Monday of each month in the year, except August and September, at Cincinnati, Ohio. At the July session no causes will be heard, except upon special order of the court.

Seventh circuit: First Tuesday in October. Term is divided into three sessions, beginning on first Tuesdays in October and January, and second Tuesday in April, at Chicago, Ill.

Eighth circuit: First Monday in May, at St. Paul, Minn.; first Mon-

day in September, at Denver, Colo. (or by the provisions of above § 126, at Cheyenne, Wyo.); first Monday in December, at St. Louis, Mo.

Ninth circuit: At San Francisco, Cal., annual term, commencing first Monday in October; adjourned sessions on first Monday in each month; calendar sessions for hearing of causes at San Francisco, Cal., commence on first Monday in October, February, and May, respectively. At Seattle, Wash., annual term, second Monday in September, for hearing of causes. At Portland, Oreg., annual term, third Monday in September, for hearing of causes.

SEC. 127. The marshals for the several districts in which said circuit courts of appeals may be held shall, under the direction of the Attorney General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for the business of said courts, and pay all incidental expenses of said court, including criers, bailiffs, and messengers: *Provided,* That in case proper rooms can not be provided in such buildings, then the marshals, with the approval of the Attorney General, may, from time to time, lease such rooms as may be necessary for such courts.

Superseding Act of March 3, 1891, c. 517, § 9, 26 Stat. at L. 829, 1 Comp. Stat. 829.

SEC. 128. The circuit courts of appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the district courts, including the United States district court for Hawaii, in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court, as provided in section two hundred and thirty-eight, unless otherwise provided by law; and, except as provided in sections two hundred and thirty-nine and two hundred and forty, the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different States; also in all cases arising under the patent laws, under the copyright laws, under the revenue laws, and under the criminal laws, and in admiralty cases.

See Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. p. 549, 4 Fed. Stat. Ann. 434, Pierce, Code § 7251.

SEC. 129. Where upon a hearing in equity in a district court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve, an injunction, or appointing a receiver to the circuit court of appeals, notwithstanding an appeal in such case might, upon final decree under the statutes regulating the same, be taken directly to the Supreme Court: *Provided,* That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the appellate court, or a judge thereof, during the pendency of such appeal: *Provided, however,* That the court below may, in its discretion, require as a condition of the appeal an additional bond.

See Act of April 14, 1906, § 7, 34 Stat. at L. 116, 1 Comp. Stat. p. 550, Pierce, Code § 7252. The above section of the Judicial Code is a substantial re-enactment of the Act of March 3, 1891, c. 517, § 7, 26 Stat. at L. 828 as amended by the Act of February 18, 1895, c. 96, 28 Stat. at L. 666.

SEC. 130. The circuit courts of appeals shall have the appellate and supervisory jurisdiction conferred upon them by the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July first, eighteen hundred and ninety-eight, and all laws amendatory thereof, and shall exercise the same in the manner therein prescribed.

See Act of July 1, 1898, § 24, 30 Stat. at L. 544, 3 Comp. Stat. p. 3431, 1 Fed. Stat. Ann. p. 529, Pierce, Code § 1377.

SEC. 131. The circuit court of appeals for the ninth circuit is empowered to hear and determine writs of error and appeals from the United States court for China, as provided in the Act entitled "An Act creating a United States court for

China and prescribing the jurisdiction thereof," approved June thirtieth, nineteen hundred and six.

See Act of June 30, 1906, 34 Stat. at L. 814, Pierce, Code § 7894.

SEC. 132. Any judge of a circuit court of appeals, in respect of cases brought or to be brought before that court, shall have the same powers and duties as to allowance of appeals and writs of error, and the conditions of such allowances, as by law belong to the justices or judges in respect of other courts of the United States, respectively.

Superseding Act of March 3, 1891, § 12, c. 517, 26 Stat. at L. 829, 1 Comp. Stat. p. 553, Pierce, Code § 7257.

SEC. 133. The circuit court of appeals, in cases in which their judgments and decrees are made final by this title, shall have appellate jurisdiction, by writ of error or appeal, to review the judgments, orders, and decrees of the supreme courts of Arizona and New Mexico, as by this title they may have to review the judgments, orders, and decrees of the district courts; and for that purpose said Territories shall, by orders of the Supreme Court of the United States, to be made from time to time, be assigned to particular circuits.

See Act of March 3, 1891, c. 517, § 15, 26 Stat. at L. 830, 1 Comp. Stat. p. 554.

SEC. 134. In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in section two hundred and forty-seven, in which the amount involved or the value of the subject-matter in controversy shall exceed five hundred dollars, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof, to the circuit court of appeals for the ninth circuit, and the judgments, orders, and decrees of said court shall be final in all such cases. But whenever such circuit court of appeals may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question

or proposition certified to it, and its instructions shall be binding upon the circuit court of appeals.

See Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828.

SEC. 135. All appeals, and writs of error, and other cases, coming from the district court for the district of Alaska to the circuit court of appeals for the ninth circuit, shall be entered upon the docket and heard at San Francisco, California, or at Portland, Oregon, or at Seattle, Washington, as the trial court before whom the case was tried below shall fix and determine: *Provided,* That at any time before the hearing of any appeal, writ of error, or other case, the parties thereto, through their respective attorneys, may stipulate at which of the above-named places the same shall be heard, in which case the case shall be remitted to and entered upon the docket at the place so stipulated and shall be heard there.

## Chapter Seven.

### THE COURT OF CLAIMS.


Sec.
136. Appointment, oath, and salary of judges.
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138. Session; quorum.
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141. Clerk's bond.
142. Contingent fund.
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167. Testimony; where taken.
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178. Effect of payment of judgment.
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180. Debtors to the United States may have amount due ascertained.
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182. Appeals in Indian cases.
183. Attorney General's report to Congress.
184. Loyalty a jurisdictional fact in certain cases.
185. Attorney General to appear for the defense.
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187. Reports of court to Congress.

SEC. 136. The Court of Claims, established by the Act of February twenty-fourth, eighteen hundred and fifty-five, shall be continued. It shall consist of a chief justice and four judges, who shall be appointed by the President, by and with the advice and consent of the Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office. The chief justice shall be entitled to receive an annual salary of six thousand five hundred dollars, and each of the other judges an annual salary of six thousand dollars, payable monthly, from the Treasury.

See § 1049 R. S. U. S., 1 Comp. Stat. p. 729, 2 Fed. Stat. Ann. p. 53, Pierce, Code § 7772.

SEC. 137. The Court of Claims shall have a seal, with such device as it may order.

Re-enacting § 1050, R. S. U. S., 1 Comp. Stat. p. 729, 2 Fed. Stat. Ann. 53, Pierce, Code § 7773.

SEC. 138. The Court of Claims shall hold one annual session at the city of Washington, beginning on the first Monday in December and continuing as long as may be necessary for the prompt disposition of the business of the court. Any three of the judges of said court shall constitute a quorum, and may hold a court for the transaction of business: *Provided,* That the concurrence of three judges shall be necessary to the decision of any case.

See § 1052 R. S. U. S., 1 Comp. Stat. p. 730, 2 Fed. Stat. Ann. p. 54, Pierce, Code § 7776. Also Act of June 23, 1874, c. 468, 18 Stat. at L. 252, 1 Comp. Stat. p. 730, 2 Fed. Stat. Ann. 54, Pierce, Code § 7777.

SEC. 139. The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a bailiff, and a chief messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session. The bailiff

shall hold his office for a term of four years, unless sooner removed by the court for cause.

Re-enacting § 1053, R. S. U. S., 1 Comp. Stat. p. 730, 2 Fed. Stat. Ann. p. 54, Pierce, Code § 7778.

SEC. 140. The salary of the chief clerk shall be three thousand five hundred dollars a year; of the assistant clerk two thousand five hundred dollars a year; of the bailiff, one thousand five hundred dollars a year, and of the chief messenger one thousand dollars a year, payable monthly from the Treasury.

See § 1054 R. S. U. S., 1 Comp. Stat. p. 730, 2 Fed. Stat. Ann. p. 54, Pierce, Code § 7779.

SEC. 141. The chief clerk shall give bond to the United States in such amount, in such form, and with such security as shall be approved by the Secretary of the Treasury.

Re-enacting § 1055 R. S. U. S., 1 Comp. Stat. p. 731, 2 Fed. Stat. Ann. 54, Pierce, Code § 7780.

SEC. 142. The said clerk shall have authority when he has given bond as provided in the preceding section, to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated for its use; and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as the accounts of other disbursing agents of the Government are settled.

Re-enacting § 1056 R. S. U. S., 1 Comp, Stat. p. 731, 2 Fed. Stat. Ann. p. 54, Pierce, Code § 7781.

SEC. 143. On the first day of every regular session of Congress, the clerk of the Court of Claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered. At the end of every term of the court he shall transmit a copy of its decisions to the heads of departments; to the Solicitor, the Comptroller, and the Auditors of the Treasury; to the Commissioner of the General Land Office and of Indian Affairs; to the chiefs of

bureaus, and to other officers charged with the adjustment of claims against the United States.

Re-enacting § 1057 R. S. U. S., 1 Comp. Stat. p. 731, 2 Fed. Stat. Ann. p. 55, Pierce, Code § 7782. "The decisions of the Court of Claims in general, not appealed from, are guides to the executive officers of the government, and furnish precedents for the executive departments in all other like cases." Meigs v. United States, 20 Ct. Cl. 181.

SEC. 144. Whoever, being elected or appointed a Senator, Member of, or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment, and either before or after he has qualified, and during his continuance in office, practice in the Court of Claims, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.

See § 1058 R. S. U. S., 1 Comp. Stat. p. 731, 2 Fed. Stat. Ann. p. 55, Pierce, Code § 7783.

SEC. 145. The Court of Claims shall have jurisdiction to hear and determine the following matters:

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to the said court jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which, prior to March third, eighteen hundred and eighty-seven, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

Second. All set-offs, counterclaims, claims for damages,

whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided,* That no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the proper accounting officer of the Treasury fails to act finally thereon within six months after the account is received in said office.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of loss by capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.

Compare § 1059, R. S. U. S., 1 Comp. Stat. p. 731, 2 Fed. Stat. Ann. p. 55, Pierce, Code § 7784.

TERRITORIAL JURISDICTION. The pendency of a suit in a court of the United States wherever situated is not a suit in a foreign jurisdiction; the territorial jurisdiction of the Court of Claims is co-extensive with the territory in which the Courts of the United States sit. Peterson v. United States, 26 Ct. Cl. 93. "It issues writs to every part of the United States, and is specially authorized to enforce them." United States v. Borcherling, 185 U. S. 223, 46 L. Ed. 884.

RESTRICTING JURISDICTION BY RULE. As in all courts, the jurisdiction conferred by Act of Congress upon the Court of Claims cannot be restricted by rule, and a rule requiring the claim to go through a governmental department before suit was therefore held void. United States v. Clyde, 13 Wall. 35, 20 L. Ed. 479.

PARTIES. To enable joint claimants to maintain a single suit they must have joint interest. Wilson v. United States, 1 Ct. Cl. 318. Suits by assignees are subject to the conditions of § 3477, R. S. U. S.

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment

of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgment of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same." 2 Comp. Stat. p. 2320, 2 Fed. Stat. Ann. p. 7, Pierce, Code § 1661. See Emmons v. United States, 48 Fed. Rep. 43; United States v. Gillis, 95 U. S. 407, 24 L. Ed. 503; Jackson v. United States, 1 Ct. Cl. 260. But the assignor and assignee may maintain an action for the use of the assignee. Tebetts v. Unied States, 5 Ct. Cl. 607. A suit brought by the holder of the legal title to the use of the beneficial owner is not within the operation of § 3477, R. S. U. S. United States v. American Tobacco Co., 166 U. S. 468, 41 L. Ed. 1081.

THE JURISDICTION SPECIALLY SUBJECT TO CONTROL BY CONGRESS. Possibly the most unique characteristic of the jurisdiction of the Court of Claims resides in the control which Congress exercises at all times to limit or expand its jurisdiction, not only generally, but as to a particular class of cases, or as to a particular case. This rule, with its underlying logic, has been thus expressed by Mr. Justice Miller;

"The Government of the United States cannot be sued for a claim or demand against it without its consent. This rule is carried so far by this court, that it has been held that when the United States is plaintiff in one of the Federal Courts, and the defendant has pleaded a set-off which the Acts of Congress have authorized him to rely on, no judgment can be rendered against the government, although it may be judicially ascertained that on striking a balance of just demands the government is indebted to the defendant in an ascertained amount. And if the United States shall sue an individual in any of her courts, and fail to establish a claim, no judgment can be rendered for the costs expended by the defendant in his defense.

"If, therefore, the Court of Claims has the right to entertain jurisdiction of cases in which the United States is defendant, and to render judgment against that defendant, it is only by virtue of Acts of Congress granting such jurisdiction, and it is limited precisely to such cases, both

in regard to parties and to the causes of action, as Congress has prescribed.

"It is true that, ordinarily, when we seek for the foundation of this jurisdiction, we look to the general law creating the court, and defining causes of which it may have cognizance. But it is equally true that whenever Congress chooses to withdraw from that jurisdiction any class of cases which had before been committed to its control, as it has done more than once, it has the power to do so, or to prescribe the rule by which such cases may be determined. Its right to do this in regard to any particular case, as well as to a class of cases, must rest on the same foundation; and no reason can be perceived why Congress may not at any time withdraw a particular case from the cognizance of that court, or prescribe in such case the circumstance under which alone the court may render a judgment against the government." DeGroot v. United States, 72 U. S. 419, 18 L. Ed. 700, 703.

CONTRACTS; EXPRESS AND IMPLIED. An appropriation made by Congress for work done may be sufficient to constitute an express contract. Myerle v. United States, 33 Ct. Cl. 1. To constitute an implied contract which will serve as a basis for the recovery of money received by the United States, "There must have been some consideration moving to the United States; or they must have received the money, charged with a duty to pay it over; or the claimant must have had a lawful right to it when it was received, as in the case of money paid by mistake." Knote v. United States, 95 U. S. 149, 24 L. Ed. 442.

JURISDICTION OVER PATENT CASES. See Hopkins on Patents, §§ 497-500. This code (§ 145) re-enacts the substance of the former statutes, confining the jurisdiction of the Court of Claims to cases arising out of contract, express or implied. Under these statutes the Court of Claims had no jurisdiction of suits against the Government for Patent Infringement. Pitcher v. United States, 1 Ct. Cl. 7. In rare cases a contract to pay for the use of a patented invention was held to be implied (Berdan Fire Arms Mfg. Co. v. United States, 156 U. S. 552, 39 L. Ed. 530), but as a rule, in the absence of an express contract, no recovery could be had (Gill v. United States, 25 Ct. Cl. 415, 160 U. S. 426, 40 L. Ed. 480). But the jurisdiction of the Court of Claims over Patent Cases has been enlarged by the Act of June 25, 1910, 36 Stat. at L. p. 851, providing as follows:

"That whenever an invention described in and covered by a patent of the United States shall hereafter be used by the United States without license of the owner thereof or lawful

right to use the same, such owner may recover reasonable compensation for such use by suit in the Court of Claims: *Provided, however,* That said Court of Claims shall not entertain a suit or award compensation under the provisions of this Act where the claim for compensation is based on the use by the United States of any article heretofore owned, leased, used by, or in the possession of the United States: *Provided further,* That in any such suit the United States may avail itself of any and all defenses, general or special, which might be pleaded by a defendant in an action for infringement, as set forth in Title Sixty of the Revised Statutes, or otherwise: *And provided further,* that the benefits of this Act shall not inure to any patentee, who, when he makes such claim is in the employment or service of the Government of the United States; or the assignee of any such patentee; nor shall this Act apply to any device discovered or invented by such employee during the time of his employment or service."

JURISDICTION OVER TORTS. The general rule excluding torts from the jurisdiction of the Court of Claims is announced in Luddington v. United States, 15 Ct. Cl. 453. The following classes of cases have been held to be outside of the jurisdiction of the Court of Claims as being founded on tort: Suits for damages for personal injuries resulting from the fall of an elevator in a public building, Bigby v. United States, 188 U. S. 400, 47 L. Ed. 519; contracts implied by law from torts, Harley v. United States, 198 U. S. 229, 49 L. Ed. 1029, 39 Ct. Cl. 105; a claim for the taking of land under tidewater for lighthouse purposes, Hill v. United States, 149 U. S. 593, 37 L. Ed. 862; a suit for the diversion of a water course, Mills v. United States, 46 Fed. Rep. 738; a suit for damages for injury to property resulting from defective construction of a dam, Hayward v. United States, 30 Ct. Cl. 219; a suit for infringement of copyright, Lanman v. United States, 27 Ct. Cl. 260; a suit for damages arising from a maritime collision, St. Louis & Miss. Valley Trans. Co. v. United States, 33 Ct. Cl. 251.

CLAIMS FOUNDED UPON A LAW OF CONGRESS. Claims of this character are justicable under the Court of Claims Act, regardless of whether they are founded on contract or in tort. Christie-Street Com. Co. v. United States, 126 Fed. Rep. 991, 994. The Court of Claims has classified the cases arising under this grant of jurisdiction as follows:

"1. Where Congress creates a class of claims such as the customs cases,

the internal revenue cases, the pension cases, and provide a jurisdiction for the ascertainment and allowance of such claims, that jurisdiction is exclusive.

"2. But where the officer clothed with authority to investigate and allow determines the facts of a case and refers it to this court for the determination of a question of law thereby presented, or where the officer, having allowed a claim, transmits it to the accounting officers for payment, and they, or the Secretary of the Treasury, refuses to give effect to the award, an action thereon will lie in this court.

"3. Where Congress create a class of claims, such as for horses and vessels lost or destroyed in the military service, and refer the claims for investigation and settlement to the accounting officers of the treasury, no jurisdiction to finally determine a legal right is created, and the accounting officers act simply in their usual capacity of auditing officers, and this court has jurisdiction of the claims.

"4. Where Congress create a class of claims, such as claims for a surplus in the treasury derived from property sold for taxes, or the direct-tax cases, with directions to the Secretary of the Treasury to pay the amount found to be due to the persons cntitled thereto, no special jurisdiction is thereby created, and an action will lie in this court.

"5. Where Congress pledge the faith of the United States in consideration of a person doing some act, such as that in the drawback cases, or in sugar-bounty cases, presenting thereby an obligation in the nature of an implied contract, the action of the Secretary of the Treasury, or of the revenue officers, is not conclusive, and an action will lie upon the statutory obligation of the government." Foster v. United States, 32 Ct. Cl. 170.

"Any Regulation of an Executive Department." This expression manifestly refers to Rules and Regulations made by the head of a Governmental Department for the conduct of his department. Harvey v. United States, 3 Ct. Cl. 38.

Demands on the Part of the United States Against a Claimant. That the right of set-off in behalf of the government is founded on § 236, R. S. U. S., and exists independently of the Act of March 3, 1875, and § 1766, R. S. U. S., see Taggart v. United States, 17 Ct. Cl. 322. So the amount of a payment made on a fraudulent voucher may be set up by way of counter claim, Charles v. United States, 19 Ct. Cl. 316. An unliquidated demand may be used as a set-off by the United States. Allen v. United States, 17 Wall. 207, 21 L. Ed. 553. That the right of the government to set off and counter claim is of equal scope with the right given the Crown by the Act of 1860, 23 and 24 Vict., c. 34, see

Roman v. United States, 11 Ct. Cl. 761. That the United States may assert a set-off against a judgment, see Bonnafon v. United States, 14 Ct. Cl. 484. That the set-off or counter claim need not be pleaded, see Hart v. United States, 118 U. S. 62, 30 L. Ed. 96; Wisconsin Cent. R. Co. v. United States, 164 U. S. 190, 41 L. Ed. 399.

"THE CLAIM OF ANY PAYMASTER, ETC." This provision extends to the disbursing officer of all the executive departments (Hobbs v. United States, 17 Ct. Cl. 189), and extends to cases where the officer has not given bond. Wood v. United States, 25 Ct. Cl. 98. The claimant's testimony, unsupported, is insufficient under this section. Pattee v. United States, 3 Ct. Cl. 397.

SEC. 146. Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such court are enforced.

Re-enacting § 1061, R. S. U. S., 1 Comp. Stat. p. 737, 2 Fed. Stat. Ann. p. 61, Pierce, Code, § 7790. Where a claim is dismissed for want of jurisdiction, judgment cannot be entered upon a counter claim. Baltimore & Ohio R. Co. v. United States, 34 Ct. Cl. 484. That in suits under the Act of March 3, 1887, c. 359, 24 Stat. at L. 505 (the Tucker Act) the Federal Courts may render a money judgment for the United States on a set-off or counter claim, see United States v. Saunders, 79 Fed. Rep. 407, 24 C. C. A. 649.

SEC. 147. Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting

forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed as a credit in the settlement of his accounts.

Re-enacting § 1062, R. S. U. S., 1 Comp. Stat. p. 737 2 Fed. Stat. Ann. p. 61, Pierce, Code, § 779. That the expression "without fault or negligence" is to be taken in its common sense (fault meaning error, and negligence meaning omission) and that the degree of care exacted is that which would be required of his agent by a prudent man in like circumstances, see Malone v. United States, 5 Ct. Cl. 486; Martin v. United States, 37 Ct. Cl. 527. For illustrations of cases where disbursing officers were granted relief from the results of such mishaps as theft, capture by an enemy, or bank failure, see Reynolds v. United States, 15 Ct. Cl. 314; Broadhead v. United States, 19 Ct. Cl. 125; Prime v. United States, 3 Ct. Cl. 209; Hobbs v. United States, 17 Ct. Cl. 189.

SEC. 148. When any claim or matter is pending in any of the executive departments which involves controverted questions of fact or law, the head of such department may transmit the same, with the vouchers, papers, documents and proofs pertaining thereto, to the Court of Claims and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the department by which it was transmitted for its guidance and action: *Provided, however,* That it shall have been transmitted with the consent of the claimant, or if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, in the latter case giving to either party such further opportunity for hearing as in its judgment justice shall require, and shall report its findings therein to the department by which the same was referred to said court. The Secretary of the Treasury may, upon the certificate of any auditor, or of the Comptroller of the Treasury, direct any claim or matter, of which, by reason of the subject matter or character, the said court might under existing laws, take jurisdiction on the voluntary action of the claimant, to be transmitted, with

all the vouchers, papers, documents and proofs pertaining thereto, to the said court for trial and adjudication.

Superseding § 1063, R. S. U. S., 1 Comp. Stat. p. 738, 2 Fed. Stat. Ann. p. 63, Pierce, Code, § 7792. "It is only the pendency of a claim or matter in an executive department that gives the head of such department jurisdiction to transmit the same to the court. Armstrong v. United States, 29 Ct. Cl. 148. See also, as to the incidental jurisdiction of the Court of Claims to adjudicate all issues arising in cases transmitted from the departments although involving unliquidated claims which the department could not have settled, see Myerle v. United States, 33 Ct. Cl. 1. That ex parte affidavits transmitted by a department with the claim will not be considered, being incompetent, see Chickasaw Nation v. United States, 19 Ct. Cl. 133.

SEC. 149. All cases transmitted by the head of any department, or upon the certificate of any auditor, or of the Comptroller of the Treasury, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations.

Re-enacting § 1064, R. S. U. S., 1 Comp. Stat. p. 738, 2 Fed. Stat. Ann. p. 63, Pierce, Code § 7793. Prior to the Act of 1863, the judgments of the Court of Claims were not conclusive. Nourse v. United States, 2 Ct. Cl. 214. As to their present conclusiveness see Baumer v. United States, 26 Ct. Cl. 82.

SEC. 150. The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court.

Re-enacting § 1065, R. S. U. S., 1 Comp. Stat. p. 739, 2 Fed. Stat. Ann. p. 64, Pierce, Code, § 7794.

SEC. 151. Whenever any bill, except for a pension, is pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may, for the investigation and determination

of facts, refer the same to the Court of Claims, which shall proceed with the same in accordance with such rules as it may adopt and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legally or equitably due from the United States to the claimant: *Provided, however,* That if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter, the subject matter of the bill is such that it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the House of Congress by which the same was referred to said court.

Superseding Act of March 3, 1887, c. 359, § 14, 24 Stat. at L. 507, 1 Comp. Stat. p. 757, 2 Fed. Stat. Ann. p. 87, Pierce, Code, § 7834. That the report of the Court of Claims under this section is not conclusive upon the merits and does not relieve the claimant from the defense of laches, see Balmer v. United States, 26 Ct. Cl. 82. That a case brought before the Court of Claims under this provision is subject to the taking of testimony under § 1063, R. S. U. S., and that ex parte affidavits transmitted by Congress with the claim are not competent, see Smith v. United States, 19 Ct. Cl. 690.

SEC. 152. If the Government of the United States shall put in issue the right of the plaintiff to recover, the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court.

Re-enacting Act of March 3, 1887, c. 359, § 151, 24 Stat. at L. 508, 1 Comp. Stat. p. 758, 2 Fed. Stat. Ann. p. 88, Pierce, Code, § 7835. For rulings as to the award of costs under this provision see Hill v. United States, 40 Fed. Rep. 441; Abbott v. United States, 66 Fed. Rep. 447; Abbott v. United States, 72 Fed. Rep. 686, 18 C. C. A. 679; Jacobus v. United States, 87 Fed. Rep. 99; United States v. Harmon, 147 U. S. 268, 37 L. Ed. 164.

SEC. 153. The jurisdiction of the said court shall not extend to any claim against the Government not pending therein on December first, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

Re-enacting § 1066 R. S. U. S., 1 Comp. Stat. p. 739, 2 Fed. Stat. Ann. 64, Pierce, Code § 7795.

SEC. 154. No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

Re-enacting § 1067, R. S. U. S., 1 Comp. Stat. p. 739, 2 Fed. Stat. Ann. 64, Pierce, Code § 7796.

SEC. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction.

Re-enacting § 1068 R. S. U. S., 1 Comp. Stat. p. 740, 2 Fed. Stat. Ann. p. 64, Pierce, Code § 7797.

SEC. 156. Every claim against the United States cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk

of the House of Representatives, as provided by law, within six years after the claim first accrues: *Provided,* That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

Re-enacting § 1069 R. S. U. S., 1 Comp. Stat. p. 740, 2 Fed. Stat. Ann. p. 65, Pierce, Code § 7798.

SEC. 157. The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law.

Re-enacting § 1070 R. S. U. S., 1 Comp. Stat. p. 740, 2 Fed. Stat. Ann. 67, Pierce, Code § 7799.

SEC. 158. The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same.

Re-enacting § 1071 R. S. U. S., 1 Comp. Stat. p. 741, 2 Fed. Stat. Ann. 67, Pierce, Code § 7800.

SEC. 159. The claimant shall in all cases fully set forth in his petition the claim, the action thereon in Congress or by any of the departments, if such action has been had, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim or of any part thereof or interest therein has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; that the claimant and, where the claim has been assigned, the original and every prior owner thereof, if

a citizen, has at all times borne true allegiance to the Government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. The said petition shall be verified by the affidavit of the claimant, his agent or attorney.

Superseding § 1072 R. S. U. S., 1 Comp. Stat. p. 741, 2 Fed. Stat. Ann. 67, Pierce, Code § 7801.

SEC. 160. The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed.

Re-enacting § 1073 R. S. U. S., 1 Comp. Stat. p. 741, 2 Fed. Stat. Ann. 68, Pierce, Code § 7802.

SEC. 161. Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to forces or government of the late Confederate States during the Civil War, the claimant asserting the loyalty of any such person to the United States during such Civil War shall be required to prove affirmatively that such person did, during said Civil War, consistently adhere to the United States and did give no aid or comfort to persons engaged in said Confederate service in said Civil War.

Superseding § 1074 R. S. U. S., 1 Comp. Stat. 742, 2 Fed. Stat. Ann. 68, Pierce, Code § 7803.

SEC. 162. The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June the first, eighteen hundred and sixty-five, under the provisions of the Act of Congress approved March twelfth, eighteen hundred and sixty-three, entitled "An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," and Acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United

States; and the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding.

See Act of March 12, 1863, c. 120, 12 Stat. at L. 820. Also § 1059, R. S. U. S. paragraph 4, 2 Fed. Stat. Ann. p. 60.

SEC. 163. The Court of Claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it, to prescribe the fees which they shall receive for their services, and to issue commissions for the taking of such testimony, whether taken at the instance of the claimant or of the United States.

Re-enacting § 1075 R. S. U. S., 1 Comp. Stat. p. 742, 2 Fed. Stat. Ann. 68, Pierce, Code § 7804.

SEC. 164. The said court shall have power to call upon any of the departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest.

Re-enacting § 1076, R. S. U. S., 1 Comp. Stat. p. 742, 2 Fed. Stat. Ann. p. 69, Pierce, Code, § 7805.

SEC. 165. When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not authorize the taking of any testimony therein.

Superseding § 1077, R. S. U. S., (the change being purely verbal), 1 Comp. Stat. p. 742, 2 Fed. Stat. Ann. p. 69, Pierce, Code, § 7806.

SEC. 166. The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any commissioner of the court and be examined on oath touching any or all matters pertaining to said claim. Such examination

shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claimant, after such order is made and due and reasonable notice is given to him, fails to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the court may, in its discretion, order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises.

Re-enacting § 1080, R. S. U. S., 1 Comp. Stat. p. 743, 2 Fed. Stat. Ann. p. 70, Pierce, Code, § 7808. The application for an order of examination under this section may be made *ex parte*, and need not recite special cause. Truitt v. United States, 30 Ct. Cl. 19. The operation of the section is limited to the claim Act. Macauley v. United States, 11 Ct. Cl. 575.

SEC. 167. The testimony in cases pending before the Court of Claims shall be taken in the county where the witness resides, when the same can be conveniently done.

Re-enacting § 1081, R. S. U. S., 1 Comp. Stat. p. 743, 2 Fed. Stat. Ann. p. 70, Pierce, Code, § 7809.

SEC. 168. The Court of Claims may issue subpœnas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein. Such subpœnas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish.

Re-enacting § 1082, R. S. U. S., 1 Comp. Stat. p. 744, 2 Fed. Stat. Ann. p. 70, Pierce, Code, § 7810.

SEC. 169. In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations.

Re-enacting § 1083, R. S. U. S., 1 Comp. Stat. p. 744, 2 Fed. Stat. Ann. p. 71, Pierce, Code, § 7811.

SEC. 170. The commissioner taking testimony to be used in the Court of Claims shall administer an oath or affirmation to the witness brought before him for examination.

Re-enacting § 1084, R. S. U. S., 1 Comp. Stat. p. 744, 2 Fed. Stat. Ann. p. 71, Pierce, Code, § 7812.

SEC. 171. When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the Government, such fees shall be paid out of the contingent fund provided for the Court of Claims, or other appropriation made by Congress for that purpose.

Re-enacting § 1085, R. S. U. S., 1 Comp. Stat. p. 744, 2 Fed. Stat. Ann. p. 71, Pierce, Code, § 7813.

SEC. 172. Any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim or of any part of any claim against the United States shall, ipso facto, forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same.

Re-enacting § 1086, R. S. U. S., 1 Comp. Stat. p. 745, 2 Fed. Stat. Ann. p. 71, Pierce, Code, § 7814.

SEC. 173. No claim shall be allowed by the accounting officers under the provisions of the Act of Congress approved June sixteenth, eighteen hundred and seventy-four, or by the Court of Claims, or by Congress, to any person where such claimant, or those under whom he claims, shall willfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect of such claim, or presented any false evidence to Congress, or to any department or court, in support thereof.

Superseding Act of April 30, 1878, c. 77, § 2, 20 Stat. at L. 524, 1 Comp. Stat. p. 178.

SEC. 174. When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

Re-enacting § 1087, R. S. U. S., 1 Comp. Stat. p. 745, 2 Fed. Stat. Ann. p. 71, Pierce, Code, § 7815.

SEC. 175. The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.

Re-enacting § 1088, R. S. U. S., 1 Comp. Stat. p. 745, 2 Fed. Stat. Ann. p. 72, Pierce, Code, § 7816. "In order to give full effect to this statute the Court of Claims must have power to grant a new trial at a term subsequent to that at which the judgment was rendered, for it explicitly provides that it may be exercised at any time within two years." United States v. Ayers, 76 U. S. 9 Wall. 608, 19 L. Ed. 625; United States v. Crusell, 79 U. S. 12 Wall. 175, 20 L. Ed. 384; *Ex parte* Russell, 80 U. S. (13 Wall.) 664, 20 L. Ed. 632; *Ex Parte* United States, 83 U. S. (16 Wall.) 699, 21 L. Ed. 507; United States v. Young, 94 U. S. 258, 24 L. Ed. 153; Young v. United States, 95 U. S. 642, 643, 24 L. Ed. 467, 468; Belknap v. United States, 150 U. S. 588, 591, 37 L. Ed. 1191, 1192. A mandate from the Supreme Court does not prevent the operation of this statute or take away the power or interfere with the discretion of the Court of Claims to grant a new trial. *Ex parte* Russell, 80 U. S. (13 Wall.) 664, 20 L. Ed. 632; Belknap v. United States, 150 U. S. 588, 591, 37 L. Ed. 1191, 1192.

SEC. 176. There shall be taxed against the losing party in each and every cause pending in the Court of Claims the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by

the clerk of said court and paid into the Treasury of the United States.

Superseding a provision of the Sundry Civil Appropriation Act of March 3, 1877, ch. 105, 19 Stat. at L. 344, 2 Fed. Stat. Ann. p. 293.

SEC. 177. No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest.

Re-enacting § 1091, R. S. U. S., 1 Comp. Stat. p. 747, 2 Fed. Stat. Ann., p. 73, Pierce, Code, § 7818, enacted as Act of March 3, 1863, ch. 92, 12 Stat. at L. 1206. This section has been uniformly applied to cases arising under the Captured and Abandoned Property Act of March 12, 1863, and special acts. Rice v. United States, 21 Ct. Cl. 413, 122 U. S. 611, 30 L. Ed. 793.

SEC. 178. The payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy.

Superseding § 1092, R. S. U. S., 1 Comp. Stat. p. 747, 2 Fed. Stat. Ann., p. 74, Pierce, Code, § 7819. That payment is a bar to motions to set aside and vacate judgments of the Court of Claims, see Vaughn v. United States, 34 Ct. Cl. 342.

SEC. 179. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

Re-enactment of § 1093 R. S. U. S., 1 Comp. Stat. 747, 2 Fed. Stat. Ann. p. 74, Pierce, Code, § 7820. That dismissal for want of jurisdiction is not a bar under this section, see Green v. United States, 18 Ct. Cl. 93; while judgment based on plea of the statute of limitations is. Battelle v. United States, 21 Ct. Cl. 250. "The judgment of the Court of Claims, from which no appeal is taken, is just as conclusive under existing laws as the judgment of the Supreme Court, until it is set aside on a motion for a new trial." Mr. Justice Clifford, in United States v. O'Grady's Exrs., 22 Wall. 641, 22 L. Ed. 772.

SEC. 180. Whenever any person shall present his petition to the Court of Claims alleging that he is or has been indebted

to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer or agent or contractor so indebted, or that he or the person for whom he is such surety, guarantor, or personal representative has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States had arisen and exists, and that he or the person he represents has applied to the proper department of the Government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application, and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said department and to the Attorney General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney General shall represent the United States at the hearing of said cause. The court may postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United States against such principal, or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court; and unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred. The provisions of section one hundred and sixty-six shall apply to cases under this section.

Superseding Act of March 3, 1887, § 3, ch. 359, 24 Stat. at L. 505, 1 Comp. Stat. p. 754, 2 Fed. Stat. Ann. p. 83, Pierce, Code, § 7823. This section is for the benefit of persons indebted to the United States. Gerding v. United States, 26 Ct. Cl. 319.

SEC. 181. The plaintiff or the United States, in any suit brought under the provision of the section last preceding, shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed.

Superseding the Act of March 3, 1887, § 9, 24 Stat. at L. 507, 1 Comp. Stat. p. 756, 2 Fed. Stat. Ann. 85, Pierce, Code § 7829.

SEC. 182. In any case brought in the Court of Claims under any Act of Congress by which that court is authorized to render a judgment or decree against the United States, or against any Indian tribe or any Indians, or against any fund held in trust by the United States for any Indian tribe or for any Indians, the claimant, or the United States, or the tribe of Indians, or other party in interest shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed.

See Act of March 3, 1891, ch. 538, § 10, 26 Stat. at L. 854, 2 Fed. Stat. Ann. p. 100, 1 Comp. Stat. p. 763, Pierce, Code § 7853.

SEC. 183. The Attorney General shall report to Congress, at the beginning of each regular session, the suits under section one hundred and eighty, in which a final judgment or decree has been rendered, giving the date of each and a statement of the costs taxed in each case.

See Act of March 3, 1891, ch. 538, § 8, 26 Stat. at L. 853, 1 Comp. Stat. p. 763, 2 Fed. Stat. Ann. 92, Pierce, Code § 7851.

SEC. 184. In any case of a claim for supplies or stores taken by or furnished to any part of the military or naval forces of the United States for their use during the late Civil War, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the Government of the United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary in-

quiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed.

Re-enacting the Act of March 3, 1883, § 4, ch. 116, 22 Stat. at L. 485, 1 Comp. Stat. p. 749, 2 Fed. Stat. Ann. p. 79, Pierce, Code, § 7840. On the same day (March 3, 1883) a special relief bill was passed (22 Stat. at L. 804, ch. 111) in considering which the Supreme Court has reviewed the decisions under the prior act relating to the effect of the proclamation of pardon and amnesty of December 25, 1868, 15 Stat. at L. 711. The above section was considered in connection with the provision of the special (Austin) Act, and the Court said;

"Undoubtedly Congress framed this Act with due regard to the state of decision under the prior Act, and hence, instead of making proof of loyalty an integral part of complainant's case with his ownership of the property and his right to the proceeds, as in the Captured and Abandoned Property Act, it made the establishment of loyalty in fact, as contra-distinguished from innocence in law produced by pardon, a prerequisite to jurisdiction. Consent to be sued was given only on this condition." Mr. Chief Justice Fuller, in Austin v. United States, 155 U. S. 417, 432, 39 L. Ed. 206, 212. August 20th, 1866, the date on which the President proclaimed the Rebellion suppressed throughout the whole of the United States (14 Stat. at L. 814) has been recognized as the date closing the Rebellion. Act of March 2, 1867, 14 Stat. at L. 422; United States v. Anderson, 9 Wall. 56, 19 L. Ed. 615; Austin v. United States, 155 U. S. 417, 420, 39 L. Ed. 206, 208.

SEC. 185. The Attorney-General, or his assistants under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under the provisions of this chapter, with the same power to interpose counter claims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is required to defend the United States in said court.

Re-enacting Act of March 3, 1883, § 5, ch. 116, 22 Stat. at L. 486, 1 Comp. Stat. p. 749.

SEC. 186. No person shall be excluded as a witness in the Court of Claims on account of color, because he or she is a

party to or interested in the cause or proceeding; and any plaintiff or party in interest may be examined as a witness on the part of the Government.

Superseding Act of March 3, 1883, § 6, ch. 116, 22 Stat. at L. 486. See § 1078 R. S. U. S., 1 Comp. Stat. 743, 2 Fed. Stat. Ann. 69, Pierce, Code § 7807.

SEC. 187. Reports of the Court of Claims to Congress, under sections one hundred and forty-eight and one hundred and fifty-one, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.

See § 1057, R. S. U. S., 1 Comp. Stat. p. 731, 2 Fed. Stat. Ann. p. 55, Pierce, Code § 7782.

See also Act of March 3, 1883, § 7, 22 Stat. at L. 485, 1 Comp. Stat. 750. 2 Fed. Stat. Ann. 75, Pierce, Code § 7843.

## CHAPTER EIGHT.

### THE COURT OF CUSTOMS APPEALS.


Sec.
188. Court of Customs Appeals; appointment and salary of judges; quorum; circuit and district judges may act in place of judge disqualified, etc.
189. Court to be always open for business; terms may be held in any circuit; when expenses of judges to be paid.
190. Marshal of the court; appointment, salary, and duties.
191. Clerk of the court; appointment, salary, and duties.
192. Assistant clerk, stenographic clerks, and reporter; appointment, salary, and duties.
193. Rooms for holding court to be provided; bailiffs and messengers.
194. To be a court of record; to prescribe form and style of seal, and establish rules and regulations; may affirm, modify, or reverse and remand case, etc.
195. Final decisions of Board of General Appraisers to be reviewed only by Customs Court.
196. Other courts deprived of jurisdiction in customs cases; pending cases excepted.
197. Transfer to Customs Court of pending cases; completion of testimony.
198. Appeals from Board of General Appraisers; time within which to be taken; record to be transmitted to customs court.
199. Records filed in Customs court to be at once placed on calendar; calendar to be called every sixty days.


SEC. 188. There shall be a United States Court of Customs Appeals, which shall consist of a presiding judge and four associate judges, each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive a salary of seven thousand dollars a year. The presiding judge shall be so designated in the order of appointment and in the commission issued to him by the President; and the associate judges shall have precedence according to the date of their commissions. Any three members of said court shall constitute a quorum, and the concurrence of three members shall be necessary to any decision thereof. In case of a vacancy or of the temporary inability or disqualification,

for any reason, of one or two of the judges of said court, the President may, upon the request of the presiding judge of said court, designate any qualified United States circuit or district judge or judges to act in his or their place; and such circuit or district judges shall be duly qualified to so act.

This court was established by the Act of August 5, 1909, §§ 28, 29, 30, 61st Congress, Sess. I. c. 6, 36 Stat. at L. p. 105.

SEC. 189. The said Court of Customs Appeals shall always be open for the transaction of business, and sessions thereof may, in the discretion of the court, be held in the several judicial circuits, and at such places as said court may from time to time designate. Any judge who, in pursuance of the provisions of this chapter, shall attend a session of said court at any place other than the city of Washington, shall be paid, upon his written and itemized certificate, by the marshal of the district in which the court shall be held, his actual and necessary expenses incurred for travel and attendance, and the actual and necessary expenses of one stenographic clerk who may accompany him; and such payments shall be allowed the marshal in the settlement of his accounts with the United States.

SEC. 190. Said court shall have the services of a marshal, with the same duties and powers, under the regulations of the court, as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be applicable. Said services within the District of Columbia shall be performed by a marshal to be appointed by and to hold office during the pleasure of the court, who shall receive a salary of three thousand dollars per annum. Said services outside of the District of Columbia shall be performed by the United States marshals in and for the districts where sessions of said court may be held; and to this end said marshals shall be the marshals of said court. The marshal of said court, for the District of Columbia, is authorized to purchase, under the direction of the presiding judge, such books, periodicals, and stationery, as may be necessary for the use of said court; and such expenditures shall be allowed and paid by the Sec-

retary of the Treasury upon claim duly made and approved by said presiding judge.

SEC. 191. The court shall appoint a clerk, whose office shall be in the city of Washington, District of Columbia, and who shall perform and exercise the same duties and powers in regard to all matters within the jurisdiction of said court as are now exercised and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the clerk shall be three thousand five hundred dollars per annum, which sum shall be in full payment for all service rendered by such clerk; and all fees of any kind whatever, and all costs shall be by him turned into the United States Treasury. Said clerk shall not be appointed by the court or any judge thereof as a commissioner, master, receiver, or referee. The costs and fees in the said court shall be fixed and established by said court in a table of fees to be adopted and approved by the Supreme Court of the United States within four months after the organization of said court: *Provided*, That the costs and fees so fixed shall not, with respect to any item, exceed the costs and fees charged in the Supreme Court of the United States; and the same shall be expended, accounted for, and paid over to the Treasury of the United States.

SEC. 192. In addition to the clerk, the court may appoint an assistant clerk at a salary of two thousand dollars per annum, five stenographic clerks at a salary of one thousand six hundred dollars per annum each, one stenographic reporter at a salary of two thousand five hundred dollars per annum, and a messenger at a salary of eight hundred and forty dollars per annum, all payable in equal monthly installments, and all of whom, including the clerk, shall hold office during the pleasure of and perform such duties as are assigned them by the court. Said reporter shall prepare and transmit to the Secretary of the Treasury once a week in time for publication in the Treasury Decisions copies of all decisions rendered to that date by said court, and prepare and transmit, under the direction of said court, at least once

a year, reports of said decisions rendered to that date, constituting a volume, which shall be printed by the Treasury Department in such numbers and distributed or sold in such manner as the Secretary of the Treasury shall direct.

SEC. 193. The marshal of said court for the District of Columbia and the marshals of the several districts in which said Court of Customs Appeals may be held shall, under the direction of the Attorney General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for said court: *Provided,* That in case proper rooms can not be provided in such buildings, then the said marshals, with the approval of the Attorney-General, may, from time to time, lease such rooms as may be necessary for said court. The bailiffs and messengers of said court shall be allowed the same compensation for their respective services as are allowed for similar services in the existing district courts. In no case shall said marshals secure other rooms than those regularly occupied by existing district courts, or other public officers, except where such can not, by reason of actual occupancy or use, be occupied or used by said Court of Customs Appeals.

SEC. 194. The said Court of Customs Appeals shall be a court of record, with jurisdiction as in this chapter established and limited. It shall prescribe the form and style of its seal, and the form of its writs and other process and procedure, and exercise such powers conferred by law as may be conformable and necessary to the exercise of its jurisdiction. It shall have power to establish all rules and regulations for the conduct of the business of the court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law. It shall have power to review any decision or matter within its jurisdiction, and may affirm, modify, or reverse the same and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly.

SEC. 195. The Court of Customs Appeals established by this chapter shall exercise exclusive appellate jurisdiction

to review by appeal, as herein provided, final decisions by a Board of General Appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs Appeals shall be final in all such cases.

For former jurisdiction of the circuit courts to review the decisions of the Board of General Appraisers, see Act of June 10, 1890, § 15, c. 407, 26 Stat. at L. 138, 1 Comp. Stat. p. 1933. As to the appeals from the decisions of the circuit courts, the finality of the decisions of the circuit courts of Appeals, and that direct appeals from the circuit court to the Supreme Court under § 5 of the Act of 1891 (see 26 Stat. at L. 828, chap. 517, 1 Comp. Stat. p. 549) will not be entertained unless the construction or application of the Constitution is involved, see American Sugar Refining Co. v. United States, 211 U. S. 155, 53 L. Ed. 129.

SEC. 196. After the organization of said court, no appeal shall be taken or allowed from any Board of United States General Appraisers to any other court, and no appellate jurisdiction shall thereafter be exercised or allowed by any other courts in cases decided by said Board of United States General Appraisers; but all appeals allowed by law from such Board of General Appraisers shall be subject to review only in the Court of Customs Appeals hereby established, according to the provisions of this chapter: *Provided,* That nothing in this chapter shall be deemed to deprive the Supreme Court of the United States of jurisdiction to hear and determine all customs cases which have heretofore been certified to said court from the United States circuit courts of appeals on applications for writs of certiorari or otherwise, nor to review by writ of certiorari any customs case heretofore decided or now pending and hereafter decided by any circuit court of appeals, provided application for said writ be made within six months after August fifth, nineteen hundred and nine: *Provided further,* That all customs cases decided by a circuit

or district court of the United States or a court of a Territory of the United States prior to said date above mentioned, and which have not been removed from said courts by appeal or writ of error, and all such cases theretofore submitted for decision in said courts and remaining undecided may be reviewed on appeal at the instance of either party by the United States Court of Customs Appeals, provided such appeal be taken within one year from the date of the entry of the order, judgment, or decrees sought to be reviewed.

SEC. 197. Immediately upon the organization of the Court of Customs Appeals, all cases within the jurisdiction of that court pending and not submitted for decision in any of the United States circuit courts of appeals, United States circuit, territorial or district courts, shall, with the record and samples therein, be certified by said courts to said Court of Customs Appeals for further proceedings in accordance herewith: *Provided,* That where orders for the taking of further testimony before a referee have been made in any of such cases, the taking of such testimony shall be completed before such certification.

SEC. 198. If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said board, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the Court of Customs Appeals for a review of the questions of law and fact involved in such decision: *Provided,* That in Alaska and in the insular and other outside possessions of the United States ninety days shall be allowed for making such application to the Court of Customs Appeals. Such application shall be made by filing in the office of the clerk of said court a concise statement of errors of law and fact complained of; and a copy of such statement

shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the court shall immediately order the Board of General Appraisers to transmit to said court the record and evidence taken by them, together with the certified statement of the facts involved in the case and their decision thereon; and all the evidence taken by and before said board shall be competent evidence before said Court of Customs Appeals. The decision of said Court of Customs Appeals shall be final, and such cause shall be remanded to said Board of General Appraisers for further proceedings to be taken in pursuance of such determination.

SEC. 199. Immediately upon receipt of any record transmitted to said court for determination the clerk thereof shall place the same upon the calendar for hearing and submission; and such calendar shall be called and all cases thereupon submitted, except for good cause shown, at least once every sixty days: *Provided,* That such calendar need not be called during the months of July and August of any year.

## CHAPTER NINE.

### THE COMMERCE COURT.


Sec.
200. Commerce Court created; judges of appointment and designation; expense allowance of judges.
201. Additional circuit judges; appointment and assignment.
202. Officers of the court; clerk, marshal, etc.; salaries, etc.
203. Court to be always open for business; sessions of, to be held in Washington and elsewhere.
204. Marshals to provide rooms for holding court outside of Washington.
205. Assignment of judges to other duty; vacancies, how filled.
206. Powers of court and judges; writs, process, procedure, etc.
207. Jurisdiction of the court.
208. Suits to enjoin, etc., orders of Interstate Commerce Commission to be against United States; restraining orders, when granted without notice.
209. Jurisdiction of the court, how invoked; practice and procedure.
210. Final judgments and decrees reviewable in Supreme Court.
211. Suits to be against United States; when United States may intervene.
212. Attorney General to control all cases; Interstate Commerce Commission may appear as of right; parties interested may intervene, etc.
213. Complainants may appear and be made parties to case.
214. Pending cases to be transferred to Commerce Court; exception; status of transferred cases.


This court was created by Act of June 18, 1910, ch. 309, 36 Stat. at L. p. 539.

SEC. 200. There shall be a court of the United States, to be known as the Commerce Court, which shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States, from among the circuit judges of the United States, for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges referred to in the next succeeding section, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation of one of

the said judges shall expire in each year thereafter. In case of the death, resignation, or termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve in the Commerce Court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of said court, and thereafter the judge senior in designation shall be the presiding judge. The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their designations. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions. Each of the judges during the period of his service in the Commerce Court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of one thousand five hundred dollars per annum.

SEC. 201. The five additional circuit judges authorized by the Act to create a Commerce Court, and for other purposes, approved June eighteenth, nineteen hundred and ten, shall hold office during good behavior, and from time to time shall be designated and assigned by the Chief Justice of the United States for service in the district court of any district, or the circuit court of appeals for any circuit, or in the Commerce Court, and when so designated and assigned for service in a district court or circuit court of appeals shall have the powers and jurisdiction in this Act conferred upon a circuit judge in his circuit.

SEC. 202. The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appropriate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Su-

preme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and deputy marshal; and such clerk, marshal, deputy clerk, and deputy marshal, shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum; the salary of the marshal three thousand dollars per annum; the salary of the deputy clerk two thousand five hundred dollars per annum; and the salary of the deputy marshal two thousand five hundred dollars per annum. The said clerk and marshal may, with the approval of the court, employ all requisite assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid into the Treasury of the United States.

SEC. 203. The Commerce Court shall always be open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia; but the powers of the court or of any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal, may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance elsewhere than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal, by the marshal of the court, and shall be allowed to him in the settlement of his accounts with the United States.

SEC. 204. The United States marshals of the several dis-

tricts outside of the city of Washington in which the Commerce Court may hold its sessions shall provide, under the direction and with the approval of the Attorney General, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms can not be provided in such public buildings, said marshals, with the approval of the Attorney General, may then lease from time to time other necessary rooms for the court.

SEC. 205. If, at any time, the business of the Commerce Court does not require the services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of Justice, terminate the assignment of any of the judges or temporarily assign him for service in any district court or circuit court of appeals. In case of illness or other disability of any judge assigned to the Commerce Court the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigency therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

SEC. 206. In all cases within its jurisdiction the Commerce Court, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a district court of the United States and of the judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The Commerce Court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs, and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals

and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the district courts of the United States.

SEC. 207. The Commerce Court shall have the jurisdiction possessed by circuit courts of the United States and the judges thereof immediately prior to June eighteenth, nineteen hundred and ten, over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this chapter shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court.

The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive; but this chapter shall not affect the jurisdiction possessed by any circuit or district

court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

FIRST CLAUSE. See Act February 4, 1887, § 16, 24 Stat. at L. 384, 3 Comp. Stat. p. 3165; Act March 2, 1889, c. 382, § 5, 25 Stat. at L. 859. See East Tennessee, V. & G. R. Co. v. Interstate Commerce Commission, 181 U. S. 1, 45 L. Ed. 719.

SECOND CLAUSE. See § 208, *post.* § 15 of the Act of Feb. 4, 1887, 24 Stat. at L. 384, 3 Fed. Stat. Ann. p. 843, was amended by § 4 of the Hepburn Act of June 29, 1906, c. 3591, 34 Stat. at L. 589, 1900 Supp. Fed. Stat. Ann. p. 265, to read: "All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission, *or be suspended or set aside by a court of competent jurisdiction.*" The last phrase is the basis of § 208 of this Code, and has been thus commented upon by Judge Noyes: "Under one possible construction of this provision, a court could only set aside an order when it infringed upon a constitutional right of the carrier, or failed to comply with the provisions of the statute. The objections to the validity of the present order which have already been examined illustrate these questions which the court undoubtedly has power to pass upon. On the other hand, under another possible construction of the provision, the court has power to pass upon the reasonableness of the orders of the commission upon their merits. We notice a trend in the decisions toward the latter construction." New York Cent. & H. R. R. Co. v. Interstate Commerce Commission, 168 Fed. Rep. 131, 139.

THIRD CLAUSE. As to the jurisdiction formerly vested in the circuit courts see Act of February 19, 1903, 32 Stat. at L. 847, § 3, 10 Fed. Stat. Ann. p. 170, Supp. Comp. Stat. p. 599, Pierce, Code § 6453.

FOURTH CLAUSE. See Act of February 4, 1887, §§ 20, 23, 24 Stat. at L. 379, 3 Fed. Stat. Ann. p. 809, 3 Comp. Stat. pp. 3169, 3171.

SEC. 208. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the Commerce Court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the Commerce Court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of

the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the Commerce Court otherwise than upon notice and after hearing, except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof may, on hearing after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of such court or judge, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application.

SEC. 209. The jurisdiction of the Commerce Court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the Commerce Court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or

answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this chapter, or by rule of the court, the practice and procedure in the Commerce Court shall conform as nearly as may be to that in like cases in a district court of the United States.

SEC. 210. A final judgment or decree of the Commerce Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a district court of the United States to the Supreme Court, and the Commerce Court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the Commerce Court as the case may require. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the Commerce Court appealed from, unless the Supreme Court or a justice thereof shall so direct; and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the Commerce Court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order

or decree. Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

SEC. 211. All cases and proceedings in the Commerce Court which but for this chapter would be brought by or against the Interstate Commerce Commission, shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the Commerce Court whenever, though it has not been made a party, public interests are involved.

SEC. 212. The Attorney General shall have charge and control of the interests of the Government in all cases and proceedings in the Commerce Court, and in the Supreme Court of the United States upon appeal from the Commerce Court. If in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: *Provided,* That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits: *Provided further,* That communities, associations, corporations, firms, and individuals who are in-

terested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by any one under the provisions of this chapter, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof; and the Attorney General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or non-action of the Attorney General therein.

SEC. 213. Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel, under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States.

SEC. 214. Until the opening of the Commerce Court, all cases and proceedings of which from that time the Commerce Court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of the Commerce Court, appeal may be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the Commerce Court which may have been begun in any other court as hereby allowed, before the said date, shall be forthwith transferred to the Commerce Court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in such court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court; and if remanded, such cause may be sent back to the court from which the appeal was taken or to the Commerce Court for further proceeding as the Supreme Court

shall direct. All previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the Commerce Court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in the Commerce Court. The clerk of the court from which any case or proceeding is so transferred to the Commerce Court shall transmit to and file in the Commerce Court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer.

## CHAPTER TEN.

### THE SUPREME COURT.


Sec.
215. Number of justices.
216. Precedents of the associate justices.
217. Vacancy in the office of Chief Justice.
218. Salaries of justices.
219. Clerk, marshal, and reporter.
220. The clerk to give bond.
221. Deputies of the clerk.
222. Records of the old court of appeals.
223. Tables of fees.
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225. Duties of the reporter.
226. Reporter's salary and allowances.
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229. Distribution of Federal Reporter, etc., and Digests.
230. Terms.
231. Adjournment for want of a quorum.
232. Certain orders made by less than quorum.
233. Original disposition.
234. Writs of prohibition and mandamus.
235. Issues of fact.
236. Appellate jurisdiction.
237. Writs of error from judgments and decrees of State courts.
238. Appeals and writs of error from United States district courts.
239. Circuit court of appeals may certify questions to Supreme Court for instructions.
240. Certiorari to circuit court of appeals.
241. Appeals and writs of error in other cases.
242. Appeals from Court of Claims.
243. Time and manner of appeals from the Court of Claims.
244. Writs of error and appeals from supreme court of and United States district court for Porto Rico.
245. Writs of error and appeals from the Supreme Courts of Arizona and New Mexico.
246. Writs of error and appeals from the Supreme Court of Hawaii.
247. Appeals and writs of error from the district court for Alaska direct to Supreme Court in certain cases.
248. Appeals and writs of error from the Supreme Court of the Philippine Islands.
249. Appeals and writs of error when a Territory becomes a State.
250. Appeals and writs of error from the Court of Appeals of the District of Columbia.
251. Certiorari to Court of Appeals, District of Columbia.
252. Appellate jurisdiction under the bankruptcy act.
253. Precedence of writs of error to State courts.
254. Cost of printing records.
255. Women may be admitted to practice.

SEC. 215. The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

Re-enacting Act of April 10, 1869, § 1, 16 Stat. at L. 44, § 673, R. S. U. S., 1 Comp. Stat. p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code. § 7287.

SEC. 216. The associate justices shall have precedence according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to their ages.

Act of September 24, 1789, c. 20 § 1, 1 Stat. at L. 73. Re-enacted § 674, R. S. U. S., 1 Comp. Stat. p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code § 7288.

SEC. 217. In case of a vacancy in the office of Chief Justice, or of his inability to perform the duties and powers of his office, they shall devolve upon the associate justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every associate justice who succeeds to the office of Chief Justice.

Act of September 24, 1789, c. 20, § 1, 1 Stat. at L. 73. Act June 25, 1868, c. 81, § 1, 15 Stat. at L. 80. Re-enacted § 675, R. S. U. S., 1 Comp. Stat. p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code § 7289.

SEC. 218. The Chief Justice of the Supreme Court of the United States shall receive the sum of fifteen thousand dollars a year, and the justices thereof shall receive the sum of fourteen thousand five hundred dollars a year each, to be paid monthly.

Superseding § 676, R. S. U. S., 1 Comp. Stat. p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7290.

SEC. 219. The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions.

Re-enacting § 677, R. S. U. S., 1 Comp. Stat. p. 559, 4 Fed. Stat. Ann. 73, Pierce, Code, § 7291.

SEC. 220. The clerk of the Supreme Court shall, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court, to the United

States, in the sum of not less than five thousand and not more than twenty thousand dollars, to be determined and regulated by the Attorney General, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court. The Supreme Court may at any time, upon the motion of the Attorney General, to be made upon thirty days' notice, require a new bond, or a bond for an increased amount within the limits above prescribed; and the failure of the clerk to execute the same shall vacate his office. All bonds given by the clerk shall, after approval, be recorded in his office, and copies thereof from the records, certified by the clerk under seal of the court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice.

Superseding Act of February 22, 1875, c. 95, § 3, 18 Stat. at L. 333, 1 Comp. Stat. p. 619.

SEC. 221. One or more deputies of the clerk of the Supreme Court may be appointed by the court on the application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occured in his lifetime.

Re-enacting § 678, R. S. U. S., Act of June 8, 1872, c. 336, 17 Stat. at L. 330, 1 Comp. Stat. p. 559, 4 Fed. Stat. Ann. 73, Pierce, Code, § 7292.

SEC. 222. The records and proceedings of the court of appeals, appointed previous to the adoption of the present Constitution, shall be kept in the office of the clerk of the Supreme Court, who shall give copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme

Court; and such copies shall have like faith and credit with all other proceedings of said court.

Re-enacting § 679, Act of May 7, 1792, c. 36, § 12, 1 Stat. at L. 279. 1 Comp. Stat. p. 559, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7293.

SEC. 223. The Supreme Court is authorized and empowered to prepare the table of fees to be charged by the clerk thereof.

Superseding § 681, R. S. U. S., 1 Comp. Stat. p. 560, 6 Fed. Stat. Ann. p. 767.

SEC. 224. The marshal is entitled to receive a salary at the rate of four thousand five hundred dollars a year. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the Chief Justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the approval of the Chief Justice he may appoint assistants and messengers to attend the court, with the compensation allowed to officers of the House of Representatives of similar grade.

Superseding § 680, R. S. U. S., 1 Comp. Stat. p. 560, 4 Fed. Stat. Ann. 159, Pierce, Code, § 7294.

SEC. 225. The reporter shall cause the decisions of the Supreme Court to be printed and published within eight months after they are made; and within the same time he shall deliver three hundred copies of the volumes of said reports to the Attorney General. The reporter shall, in any year when he is so directed by the court, cause to be printed and published a second volume of said decisions, of which he shall deliver a like number of copies in like manner and time.

Superseding § 681, R. S. U. S., 6 Fed. Stat. Ann. 761, 1 Comp. Stat. p. 560, Pierce, Code, § 7295.

SEC. 226. The reporter shall be entitled to receive from the Treasury an annual salary of four thousand five hundred dollars when his report of said decisions constitutes one volume, and an additional sum of one thousand two hundred dollars when, by direction of the court, he causes to be printed and published in any year a second volume; and said reporter shall be annually entitled to clerk hire in the sum of one thou-

sand two hundred dollars, and to office rent, stationery, and contingent expenses in the sum of six hundred dollars: *Provided,* That the volumes of the decisions of the court heretofore published shall be furnished by the reporter to the public at a sum not exceeding two dollars per volume, and those hereafter published at a sum not exceeding one dollar and seventy-five cents per volume; and the number of volumes now required to be delivered to the Attorney-General shall be furnished by the reporter without any charge therefor. Said salary and compensation, respectively, shall be paid only when he causes such decisions to be printed, published, and delivered within the time and in the manner prescribed by law, and upon the condition that the volumes of said reports shall be sold by him to the public for a price not exceeding one dollar and seventy-five cents a volume.

Superseding § 682, R. S. U. S., 1 Comp. Stat. p. 560, 6 Fed. Stat. Ann. 767, Pierce, Code § 7296. As amended, Act of August 5, 1882, c. 389, § 1, 22 Stat. at L. 254, 1 Comp. Stat. p. 561.

SEC. 227. The Attorney General shall distribute copies of the Supreme Court reports, as follows: To the President, the justices of the Supreme Court, the judges of the Commerce Court, the judges of the Court of Customs Appeals, the judges of the circuit courts of appeals, the judges of the district courts, the judges of the Court of Claims, the judges of the Court of Appeals and of the Supreme Court of the District of Columbia, the judges of the several Territorial courts, the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, the Secretary of the Interior, the Postmaster General, the Attorney General, the Secretary of Agriculture, the Secretary of Commerce and Labor, the Solicitor General, the Assistant to the Attorney General, each Assistant Attorney General, each United States district attorney, each Assistant Secretary of each Executive Department, the Assistant Postmasters General, the Secretary of the Senate for the use of the Senate, the Clerk of the House of Representatives for the use of the House of Representatives, the Governors of the Territories, the Solicitor for the Department of State, the Treasurer of the United States,

the Solicitor of the Treasury, the Register of the Treasury, the Comptroller of the Treasury, the Comptroller of the Currency, the Commissioner of Internal Revenue, the Director of the Mint, each of the six Auditors in the Treasury Department, the Judge Advocate General, War Department, the Paymaster General, War Department, the Judge Advocate General, Navy Department, the Commissioner of Indian Affairs, the Commissioner of Pensions, the Commissioner of the General Land Office, the Commissioner of Patents, the Commissioner of Education, the Commissioner of Labor, the Commissioner of Navigation, the Commissioner of Corporations, the Commissioner General of Immigration, the Chief of the Bureau of Manufactures, the Director of the Geological Survey, the Director of the Census, the Forester, Department of Agriculture, the Purchasing Agent, Post Office Department, the Interstate Commerce Commission, the Clerk of the Supreme Court of the United States, the Marshal of the Supreme Court of the United States, the Attorney for the District of Columbia, the Naval Academy at Annapolis, the Military Academy at West Point, and the heads of such other executive offices as may be provided by law, of equal grade with any of said offices, each one copy; to the Law Library of the Supreme Court, twenty-five copies; to the Law Library of the Department of the Interior, two copies; to the Law Library of the Department of Justice, two copies; to the Secretary of the Senate for the use of the committees of the Senate, twenty-five copies; to the Clerk of the House of Representatives for the use of the committees of the House, thirty copies; to the Marshal of the Supreme Court of the United States, as custodian of the public property used by the court, for the use of the justices thereof in the conference room, robing room, and court room, three copies; to the Secretary of War for the use of the proper courts and officers of the Philippine Islands and for the headquarters of military departments in the United States, twelve copies; and to each of the places where district courts of the United States are now holden, including Hawaii, and Porto Rico, one copy. He shall also distribute one complete set of said reports, and

one set of the digests thereof, to such executive officers as are entitled to receive said reports under this section and have not already received them, to each United States judge and to each United States district attorney who has not received a set, to each of the places where district courts are now held to which said reports have not been distributed, and to each of the places at which a district court may hereafter be held, the edition of said reports and digests to be selected by the judge or officer receiving them. No distribution of reports and digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The clerks of said courts (except the Supreme Court) shall in all cases keep said reports and digest for the use of the courts and of the officers thereof. Such reports and digest shall remain the property of the United States, and shall be preserved by the officers above named and by them turned over to their successors in office.

See former Acts; § 683, R. S. U. S., 1 Comp. Stat. p. 561, 6 Fed. Stat. Ann. 768, Pierce, Code, § 7297; Act of February 12, 1889, c. 135, §§ 1, 2, 25 Stat. at L. 661, 1 Comp. Stat. p. 562, 6 Fed. Stat. Ann. p. 769, Pierce, Code, § 7297.

SEC. 228. The publishers of the decisions of the Supreme Court shall deliver to the Attorney General, in addition to the three hundred copies delivered by the Reporter, such number of copies of each report heretofore published, as the Attorney General may require, for which he shall pay not more than two dollars per volume, and such number of copies of each report hereafter published as he may require, for which he shall pay not more than one dollar and seventy-five cents per volume. The Attorney General shall include in his annual estimates submitted to Congress, an estimate for the current volumes of such reports, and also for the additional sets of reports and digests required for distribution under the section last preceding.

SEC. 229. The Attorney General is authorized to procure

complete sets of the Federal Reporter or, in his discretion, other publication containing the decisions of the circuit courts of appeals, circuit courts, and district courts, and digests thereof, and also future volumes of the same as issued, and distribute a copy of each such reports and digests to each place where a circuit Court of appeals, or a district court, is now or may hereafter regularly be held, and to the Supreme Court of the United States, the Court of Claims, the court of Customs Appeals, the Commerce Court, the Court of Appeals and the Supreme Court of the District of Columbia, the Attorney General, the Solicitor General, the Solicitor of the Treasury, the Assistant Attorney General for the Department of the Interior, the Commissioner of Patents, and the Interstate Commerce Commission; and to the Secretary of the Senate, for the use of the Senate, and to the Clerk of the House of Representatives, for the use of the House of Representatives, not more than three sets each. Whenever any such court room, office, or officer shall have a partial or complete set of any such reports, or digests, already purchased or owned by the United States, the Attorney General shall distribute to such court room, office, or officer, only sufficient volumes to make a complete set thereof. No distribution of reports or digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The clerks of the courts (except the Supreme Court) to which the reports and digests are distributed under this section, shall keep such reports and digests for the use of the courts and the officers thereof. All reports and digests distributed under the provisions of this section shall be and remain the property of the United States and, before distribution, shall be plainly marked on their covers with the words "The Property of the United States," and shall be transmitted by the officers receiving them to their successors in office. Not to exceed two dollars per volume shall be paid for the back and current volumes of the Federal Reporter or other publication purchased under the provisions of this section, and not to

exceed five dollars per volume for the digest, the said money to be disbursed under the direction of the Attorney General; and the Attorney General shall include in his annual estimates submitted to Congress, an estimate for the back and current volumes of such reports and digests, the distribution of which is provided for in this section.

SEC. 230. The Supreme Court shall hold at the seat of government, one term annually, commencing on the second Monday in October, and such adjourned or special terms as it may find necessary for the dispatch of business.

See former § 684, R. S. U. S., 1 Comp. Stat. p. 563, 4 Fed. Stat. Ann. 992, Pierce, Code, § 7309.

SEC. 231. If, at any session of the Supreme Court, a quorum does not attend on the day appointed for holding it, the justices who do attend may adjourn the court from day to day for twenty days after said appointed time, unless there be sooner a quorum. If a quorum does not attend within said twenty days, the business of the court shall be continued over till the next appointed session; and if, during a term, after a quorum has assembled, less than that number attend on any day, the justices attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

Re-enacting § 685, R. S. U. S., 1 Comp. Stat. p. 563, 4 Fed. Stat. Ann. 693, Pierce, Code, § 7310.

SEC. 232. The justices attending at any term, when less than a quorum is present, may, within the twenty days mentioned in the preceding section, make all necessary orders touching any suit, proceeding, or process, depending in or returned to the court, preparatory to the hearing, trial, or decision thereof.

Re-enacting § 686, R. S. U. S., 1 Comp. Stat. p. 564, 4 Fed. Stat. Ann. 693, Pierce, Code, § 7311.

SEC. 233. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original but not exclusive jurisdiction. And it shall have exclusively all such jurisdiction of suits or

proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public ministers, or in which a consul or vice consul is a party.

Re-enacting § 687, R. S. U. S., Act of September 24, 1789, c. 20, § 13, 1 Stat. at L. 80, 1 Comp. Stat. p. 565, 4 Fed. Stat. Ann. 436, Pierce, Code, § 7317.

JURISDICTION FIXED BY THE CONSTITUTION. The original jurisdiction of the Supreme Court can neither be enlarged nor restricted by Congress. Marbury v. Madison, 1 Cranch. 137, 2 L. Ed. 60.

JURISDICTION SPARINGLY EXERCISED. "The jurisdiction is limited and manifestly intended to be sparingly exercised, and should not be expanded by construction." California v. Southern Pac. Co., 157 U. S. 229, 261, 39 L. Ed. 683, 695.

EXCLUSIVE AND NON-EXCLUSIVE JURISDICTION DISTINGUISHED. "By the Constitution and according to the statute this court has exclusive jurisdiction of all controversies of a civil nature where a state is a party, but not of controversies between a state and its own citizens, and original but not exclusive jurisdiction of controversies between a state and citizens of another state or aliens." California v. Southern Pac. Co., 157 U. S. 229, 258, 39 L. Ed. 683, 694.

SEC. 234. The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party.

Re-enacting § 688, R. S. U. S., Act of September 24, 1789, c. 20, § 13, 1 Stat. at L. 80, 1 Comp. Stat. p. 565, 4 Fed. Stat. Ann. 439, Pierce, Code, § 7318.

The issuance of the writ of prohibition is limited to cases in which the district courts are proceeding as courts of admiralty and maritime jurisdiction. Ex parte Graham, 10 Wall. 541, 19 L. Ed. 981; Ex parte Easton, 95 U. S. 68, 24 L. Ed. 373. Mandamus "does not lie to control judicial discretion, except when the discretion has been abused; but it is a remedy

when the case is outside the jurisdiction of the court or officer to which or to whom the writ is addressed. One of its peculiar and more common uses is to restrain inferior courts and to keep them within their lawful bounds." Virginia v. Rives, 100 U. S. 313, 25 L. Ed. 667.

SEC. 235. The trial of issues of fact in the Supreme Court, in all actions of law against citizens of the United States shall be by jury.

Re-enacting § 689, R. S. U. S., Act of September 24, 1789, c. 20, § 13, 1 Stat. at L. 80, 1 Comp. Stat. p. 565, 4 Fed. Stat. Ann. 443, Pierce, Code, § 7319.

SEC. 236. The Supreme Court shall have appellate jurisdiction in the cases hereinafter specially provided for.

Superseding (with §§ 237, 238, 239) §§ 690, 693, R. S. U. S., See 1 Comp. Stat. p. 556, 4 Fed. Stat. Ann. 443, Pierce, Code, § 7320.

SEC. 237. A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority, may be reexamined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, at their discretion, award execution or remand the same to the court from which it was removed by the writ.

Re-enacting § 709, R. S. U. S., 1 Comp. Stat. p. 575, 4 Fed. Stat. Ann. p. 467, Pierce, Code § 7340. Jurisdiction under this provision must be

strictly within the terms of the statute (Capital Nat. Bank v. Cadiz Nat. Bank, 172 U. S. 425, 43 L. Ed. 502), and cannot be conferred by consent of the parties (Mills v. Brown, 16 Peters 525, 10 L. Ed. 1055). The method of review under this provision is by writ of error. Dower v. Richards, 151 U. S. 658, 38 L. Ed. 305.

SEC. 238. Appeals and writs of error may be taken from the district courts, including the United States district court for Hawaii, direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision; from the final sentences and decrees in prize causes; in any case that involves the construction or application of the Constitution of the United States; in any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question; and in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Superseding Act March 3, 1891, c. 517, § 5, 26 Stat. at L. 827, 1 Comp. Stat. p. 549.

SEC. 239. In any case within its appellate jurisdiction, as defined in section one hundred and twenty-eight, the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

Superseding the first paragraph of Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. p. 550, 4 Fed. Stat. Ann. p. 435, Pierce, Code, § 7251. See Hopkins on Patents, § 490.

SEC. 240. In any case, civil or criminal, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this Title, it shall be competent for the Supreme Court to require, by certiorari or otherwise, upon the petition of any party thereto, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

Re-enacting a clause of Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. p. 550, 4 Fed. Stat. Ann. p. 435, Pierce, Code § 7251.

SEC. 241. In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs.

Re-enacting the final clause of the Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. 550, 4 Fed. Stat. Ann. p. 435, Pierce, Code § 7251.

SEC. 242. An appeal to the Supreme Court shall be allowed on behalf of the United States, from all judgments of the Court of Claims adverse to the United States, and on behalf of the plaintiff in any case where the amount in controversy exceeds three thousand dollars, or where his claim is forfeited to the United States by the judgment of said court as provided in section one hundred and seventy-two.

Re-enacting § 707 R. S. U. S., 1 Comp. Stat. p. 574, 4 Fed. Stat. Ann. p. 467, Pierce, Code § 7338.

SEC. 243. All appeals from the Court of Claims shall be taken within ninety days after the judgment is rendered, and shall be allowed under such regulations as the Supreme Court may direct.

Re-enacting § 708 R. S. U. S., 1 Comp. Stat. p. 575, 4 Fed. Stat. Ann. 467, Pierce, Code, § 7339.

SEC. 244. Writs of error and appeals from the final judgments and decrees of the supreme court of, and the United

States district court for, Porto Rico, may be taken and prosecuted to the Supreme Court of the United States, in any case wherein is involved the validity of any copyright, or in which is drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, or wherein the Constitution of the United States, or a treaty thereof, or an Act of Congress is brought in question and the right claimed thereunder is denied, without regard to the sum or value of the matter in dispute; and in all other cases in which the sum or value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars. Such writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken to the Supreme Court of the United States from the district courts.

See Act of May 1, 1900, § 35, 31 Stat. at L. 715, 5 Fed. Stat. Ann. p. 776, Pierce, Code § 9120.

SEC. 245. Writs of error and appeals from the final judgments and decrees of the supreme courts of the Territories of Arizona and New Mexico may be taken and prosecuted to the Supreme Court of the United States in any case wherein is involved the validity of any copyright, or in which is drawn in question the validity of a treaty or statute of, or authority exercised under, the United States, without regard to the sum or value of the matter in dispute; and in all other cases in which the sum or value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars.

See § 1909 R. S. U. S., 7 Fed. Stat. Ann. p. 231. The Supreme Court is not given jurisdiction by this section to review decisions of the courts named in criminal cases. Farnsworth v. Montana, 129 U. S. 104, 32 L. Ed. 616.

SEC. 246. Writs of error and appeals from the final judgments and decrees of the supreme court of the Territory of

Hawaii may be taken and prosecuted to the Supreme Court of the United States, within the same time, in the same manner, under the same regulations, and in the same classes of cases, in which writs of error and appeals from the final judgments and decrees of the highest court of a State in which a decision in the suit could be had, may be taken and prosecuted to the Supreme Court of the United States under the provisions of section two hundred and thirty-seven; and also in all cases wherein the amount involved, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds the sum or value of five thousand dollars.

See Act of March 3, 1905, § 3, c. 1465, 33 Stat. at L. 1035, 10 Fed. Stat. Ann. p. 92.

SEC. 247. Appeals and writs of error may be taken and prosecuted from final judgments and decrees of the district court for the district of Alaska or for any division thereof, direct to the Supreme Court of the United States, in the following cases: In prize cases; and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question, or in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States. Such writs of error and appeal shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the district courts to the Supreme Court.

See Alaska Code of Civil Procedure, ch. 51, § 504, 31 Stat. at L. 414, 1 Fed. Stat. Ann. p. 147.

SEC. 248. The Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the supreme court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby, in which the Constitution, or any statute, treaty, title, right, or

privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court on appeal or writ of error by the party aggrieved, within the same time, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States.

See § 10, Act of July 1, 1902, 32 Stat. at L. 695, 5 Fed. Stat. Ann. p. 722.

SEC. 249. In all cases where the judgment or decree of any court of a Territory might be reviewed by the Supreme Court on writ of error or appeal, such writ of error or appeal may be taken, within the time and in the manner provided by law, notwithstanding such Territory has, after such judgment or decree, been admitted as a State; and the Supreme Court shall direct the mandate to such court as the nature of the writ of error or appeal requires.

Re-enacting Act of June 12, 1858, c. 154, § 18, 11 Stat. at L. 328, § 703 R. S. U. S., 1 Comp. Stat. p. 572, 4 Fed. Stat. Ann. 461, Pierce Code § 7332.

SEC. 250. Any final judgment or decree of the court of appeals of the District of Columbia may be reexamined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:

First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in said Supreme Court, then the question of jurisdiction alone shall be certified to said Supreme Court for decision.

Second. In prize cases.

Third. In cases involving the construction or application

of the Constitution of the United States, or the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority.

Fourth. In cases in which the constitution, or any law of a State, is claimed to be in contravention of the Constitution of the United States.

Fifth. In cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question.

Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.

Except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, and in admiralty cases; and, except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases not reviewable as hereinbefore provided.

Writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the circuit courts of appeals to the Supreme Court of the United States.

See former §§ 705, 706 R. S. U. S. and Act of Feb. 9, 1893, c. 74, § 8, 27 Stat. at L. 436, 1 Comp. Stat. p. 573, 4 Fed. Stat. Ann. 466, Pierce, Code § 7335.

SEC. 251. In any case in which the judgment or decree of said court of appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to it for its review and determination, with the same power and authority in the case as if it had been carried by writ of error or appeal to said Supreme Court. It shall also be competent for said court of appeals, in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of

that court for their proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon said court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

See Act of March 3, 1897, c. 390, 29 Stat. at L. 692, 1 Comp. Stat. p. 574, Pierce, Code § 7337.

SEC. 252. The Supreme Court of the United States is hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings, from the courts of bankruptcy, from which it has appellate jurisdiction in other cases; and shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

An appeal may be taken to the Supreme Court of the United States from any final decision of a court of appeals allowing or rejecting a claim under the laws relating to bankruptcy, under such rules and within such time as may be prescribed by said Supreme Court, in the following cases and no other:

First. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

Second. Where some justice of the Supreme Court shall certify that in his opinion the determination of the question involved in the allowance or rejection of such claim is essential to a uniform construction of the laws relating to bankruptcy throughout the United States.

Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof, and may

issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

See Act of July 1, 1898, c. 541, § 24, 30 Stat. at L. 553, 3 Comp. Stat. p. 3431, Pierce, Code § 1377.

SEC. 253. Cases on writ of error to revise the judgment of a State court in any criminal case shall have precedence on the docket of the Supreme Court, of all cases to which the Government of the United States is not a party, excepting only such cases as the court, in its discretion, may decide to be of public importance.

Re-enacting § 710, R. S. U. S., 1 Comp. Stat. 576, 4 Fed. Stat. Ann. 490, Pierce, Code, § 7341.

SEC. 254. There shall be taxed against the losing party in each and every cause pending in the Supreme Court the cost of printing the record in such case, except when the judgment is against the United States.

Superseding Act of March 3, 1877, c. 105, § 1, 19 Stat. at L. 344, 2 Fed. Stat. Ann. 293, Pierce, Code, § 208.

SEC. 255. Any woman who shall have been a member of the bar of the highest court of any State or Territory, or of the court of appeals of the District of Columbia, for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practice before the Supreme Court of the United States.

Re-enacting Act of February 15, 1879, c. 81, 20 Stat. at L. 292, 1 Comp. Stat. p. 590, 1 Fed. Stat. Ann. 518, Pierce, Code, § 1348.

## CHAPTER ELEVEN.

### PROVISIONS COMMON TO MORE THAN ONE COURT.


Sec.
256. Cases in which jurisdiction of United States courts shall be exclusive of State courts.
257. Oath of United States judges.
258. Judges prohibited from practicing law.
259. Traveling expenses, etc., of circuit justices and circuit and district judges.
260. Salary of judges after resignation.
261. Writs of ne exeat.
262. Power to issue writs.
263. Temporary restraining orders.
264. Injunctions; in what cases judge may grant.
265. Injunctions to stay proceedings in State courts.
266. Injunctions based upon alleged unconstitutionality of State statutes; when and by whom may be granted.
267. When suits in equity may be maintained.
268. Power to administer oaths and punish contempts.
269. New trials.
270. Power to hold to security for the peace and good behavior.
271. Power to enforce awards of foreign consuls, etc., in certain cases.
272. Parties may manage their causes personally or by counsel.
273. Certain officers forbidden to act as attorneys.
274. Penalty for violating preceding section.


SEC. 256. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States:

First. Of all crimes and offenses cognizable under the authority of the United States.

Second. Of all suits for penalties and forfeitures incurred under the laws of the United States.

Third. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors, in all cases, the right of a common-law remedy, where the common law is competent to give it.

Fourth. Of all seizures under the laws of the United States, on land or on waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States;

and of all proceedings for the condemnation of property taken as prize.

Fifth. Of all cases arising under the patent-right, or copyright laws of the United States.

Sixth. Of all matters and proceedings in bankruptcy.

Seventh. Of all controversies of a civil nature, where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens.

Eighth. Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice-consuls.

Superseding § 711 R. S. U. S. 1 Comp. Stat. p. 577, 4 Fed. Stat. Ann. p. 493, Pierce, Code § 7347.

For consideration of the various subjects embraced in this section see notes to § 24, *ante*.

SEC. 257. The justices of the Supreme Court, the circuit judges, and the district judges, hereafter appointed, shall take the following oath before they proceed to perform the duties of their respective offices: "I, ——— ———, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ——— according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States: So help me God."

Re-enacting § 712 R. S. U. S., 1 Comp. Stat. p. 578, 4 Fed. Stat. Ann. p. 497, Pierce, Code § 7348.

SEC. 258. It shall not be lawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. Any person offending against the prohibition of this section shall be deemed guilty of a high misdemeanor.

Re-enacting § 713, R. S. U. S., 1 Comp. Stat. p. 578, 4 Fed. Stat. Ann. p. 497, Pierce, Code § 7349.

SEC. 259. The circuit justices, the circuit and district

judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall each be allowed and paid his necessary expenses of travel, and his reasonable expenses (not to exceed ten dollars per day) actually incurred for maintenance, consequent upon his attending court or transacting other official business in pursuance of law at any place other than his official place of residence, said expenses to be paid by the marshal of the district in which such court is held or official business transacted, upon the written certificate of the justice or judge. The official place of residence of each justice and of each circuit judge while assigned to the Commerce Court shall be at Washington; and the official place of residence of each circuit and district judge, and of each judge of the district courts of the United States in Alaska, Hawaii, and Porto Rico, shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Every such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence.

See § 596 R. S. U. S., 1 Comp. Stat. p. 482, 4 Fed. Stat. Ann. p. 677, Pierce, Code § 7102; repealed, so far as it forbade allowance of expenses, Act March 3, 1881, c. 133, 21 Stat. at L. 454, 1 Comp. Stat. p. 482, 4 Fed. Stat. Ann. p. 677, Pierce, Code § 257.

SEC. 260. When any judge of any court of the United States appointed to hold his office during good behavior resigns his office, after having held a commission or commissions as judge of any such court or courts at least ten years continuously, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the salary which is payable at the time of his retirement for the office that he held at the time of his resignation.

Re-enacting § 714 R. S. U. S., 1 Comp. Stat. p. 578, 4 Fed. Stat. Ann. p. 498, Pierce, Code § 7350.

SEC. 261. Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be

granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States.

Re-enacting § 717 R. S. U. S., 1 Comp. Stat. p. 580, 5 Fed. Stat. Ann. p. 353, Pierce, Code § 7353.

SEC. 262. The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.

Re-enacting § 716 R. S. U. S., 1 Comp. Stat. p. 580, 4 Fed. Stat. Ann. p. 498, Pierce, Code § 7352.

SEC. 263. Whenever notice is given of a motion for an injunction out of a district court, the court or judge thereof may, if there appears to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion; and such order may be granted with or without security, in the discretion of the court or judge.

Re-enacting § 718 R. S. U. S., 1 Comp. Stat. p. 580, 4 Fed. Stat. Ann. p. 506, Pierce, Code, § 7354.

SEC. 264. Writs of injunction may be granted by any justice of the Supreme Court in cases where they might be granted by the Supreme Court; and by any judge of a district court in cases where they might be granted by such court. But no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted, elsewhere than within such circuit, or at such place outside of the same as the parties may stipulate in writing, except when it can not be heard by the district judge of the district. In case of the

absence from the district of the district judge, or of his disability, any circuit judge of the circuit in which the district is situated may grant an injunction or restraining order in any case pending in the district court, where the same might be granted by the district judge.

Re-enacting § 719 R. S. U. S., 1 Comp. Stat. p. 581, 4 Fed. Stat. Ann. p. 508, Pierce, Code § 7355.

SEC. 265. The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

Re-enacting § 720, R. S. U. S., 1 Comp. Stat. 581, 4 Fed. Stat. Ann. p. 509, Pierce, Code § 7356.

SEC. 266. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court, or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court, or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and

to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case.

Superseding Act of June 18, 1910, § 17, ch. 309, 36 Stat. at L. 557. As to injunction to restrain the enforcement of a state law, see Ex parte Young, 209 U. S. 123, 52 L. Ed. p. 714.

SEC. 267. Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law.

Re-enacting § 723 R. S. U. S., 1 Comp. Stat. p. 583, 4 Fed. Stat. Ann. p. 530, Pierce, Code § 7359. As this section merely embodies an elementary rule of law, it might well have been omitted from the Code.

SEC. 268. The said courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: *Provided,* That such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful

writ, process, order, rule, decree, or command of the said courts.

Re-enacting § 725 R. S. U. S., 1 Comp. Stat. 583, 4 Fed. Stat. Ann. p. 534, Pierce; Code § 7361.

SEC. 269. All of the said courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law.

Re-enacting § 726 R. S. U. S., 1 Comp. Stat. p. 584, 4 Fed. Stat. Ann. p. 549, Pierce, Code § 7361.

SEC. 270. The judges of the Supreme Court and of the circuit courts of appeals and district courts, United States commissioners, and the judges and other magistrates of the several States, who are or may be authorized by law to make arrests for offenses against the United States, shall have the like authority to hold the security of the peace and for good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them.

Re-enacting § 727 R. S. U. S., 1 Comp. Stat. p. 584, 1 Fed. Stat. Ann. p. 519, Pierce, Code § 7363.

SEC. 271. The district courts and the United States commissioners shall have power to carry into effect, according to the true intent and meaning thereof, the award or arbitration or decree of any consul, vice consul, or commercial agent of any foreign nation, made or rendered by virtue of authority conferred on him as such consul, vice consul, or commercial agent, to sit as judge or arbitrator in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to his charge, application for the exercise of such power being first made to such court or commissioner, by petition of such consul, vice consul, or commercial agent. And said courts and commissioners may issue all proper remedial process, mesne and final, to carry into full effect such award, arbitration, or decree, and to enforce obedience thereto by imprisonment in

the jail or other place of confinement in the district in which the United States may lawfully imprison any person arrested under the authority of the United States, until such award, arbitration, or decree is complied with, or the parties are otherwise discharged therefrom, by the consent in writing of such consul, vice consul, or commercial agent, or his successor in office, or by the authority of the foreign government appointing such consul, vice consul, or commercial agent: *Provided, however,* That the expenses of the said imprisonment and maintenance of the prisoners, and the cost of the proceedings, shall be borne by such foreign government, or by its consul, vice consul, or commercial agent requiring such imprisonment. The marshals of the United States shall serve all such process, and do all other acts necessary and proper to carry into effect the premises, under the authority of the said courts and commissioners.

Re-enacting § 728 R. S. U. S., 1 Comp. Stat. p. 584, 4 Fed. Stat. Ann. p. 551, Pierce, Code § 7364.

SEC. 272. In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein.

Re-enacting § 747, R. S. U. S., 1 Comp. Stat. 590, 4 Fed. Stat. Ann. p. 556, Pierce, Code § 7381.

SEC. 273. No clerk, or assistant or deputy clerk, of any Territorial district, or circuit court of appeals, or of the Court of Claims, or of the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in any of said courts, or in any district for which he is acting as such officer.

Re-enacting § 748 R. S. U. S., 1 Comp. Stat. p. 590, 4 Fed. Stat. Ann. 556, Pierce, Code § 7382.

SEC. 274. Whoever shall violate the provisions of the preceding section shall be stricken from the roll of attorneys by

the court upon complaint, upon which the respondent shall have due notice and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office.

Re-enacting § 749 R. S. U. S., 1 Comp. Stat. p. 591, 4 Fed. Stat. Ann. p. 153, Pierce, Code § 7383.

## CHAPTER TWELVE.

### JURIES.


Sec.
275. Qualifications and exemptions of jurors.
276. Jurors, how drawn.
277. Jurors, how to be apportioned in the district.
278. Race or color not to exclude.
279. Venire, how issued and served.
280. Talesmen for petit juries.
281. Special juries.
282. Number of grand jurors.
283. Foreman of grand jury.
284. Grand juries, when summoned.
285. Discharge of grand juries.
286. Jurors not to serve more than once a year.
287. Challenges.
288. Persons disqualified for service on jury in prosecutions for polygamy, etc.


SEC. 275. Jurors to serve in the courts of the United States, in each State respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such State may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned.

Superseding § 800 R. S. U. S., 1 Comp. Stat. p. 623, 4 Fed. Stat. Ann. p. 737, Pierce, Code § 7456.

SEC. 276. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing

that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations until the whole number required shall be placed therein.

Re-enacted from a portion of § 2, Act of June 30, 1879, c. 52, 21 Stat. at L. 43, 1 Comp. Stat. p. 624, 4 Fed. Stat. Ann. p. 749, Pierce, Code § 7476.

SEC. 277. Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such service.

Re-enacting § 802 R. S. U. S., 1 Comp. Stat. p. 625, 4 Fed. Stat. Ann. p. 741, Pierce, Code § 7457.

SEC. 278. No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States on account of race, color, or previous condition of servitude.

Re-enacted from a portion of § 2, Act of June 30, 1879, c. 52, 21 Stat. at L. 43, 1 Comp. Stat. p. 624, 4 Fed. Stat. Ann. p. 749, Pierce, Code § 7476.

SEC. 279. Writs of venire facias, when directed by the court, shall issue from the clerk's office, and shall be served and returned by the marshal in person, or by his deputy; or, in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as may be specially appointed for that purpose by the court, who shall administer to him an oath that he will truly and impartially serve and return the writ. Any person named in such writ who resides elsewhere than at the place at which the court is held, shall be served by the marshal mailing a copy thereof to such person commanding him to attend as a juror at a time and place designated therein, which copy shall be registered and deposited in the post office addressed to such person at his usual post-office address. And the receipt of the person so addressed for such registered copy shall be

regarded as personal service of such writ upon such person, and no mileage shall be allowed for the service of such person. The postage and registry fee shall be paid by the marshal and allowed him in the settlement of his accounts.

Superseding § 803, R. S. U. S., 1 Comp. Stat. p. 625, 4 Fed. Stat. Ann. p. 742, Pierce, Code § 7458.

SEC. 280. When, from challenges or otherwise, there is not a petit jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court in which such defect of jurors happens, return jurymen from the bystanders sufficient to complete the panel; and when the marshal or his deputy is disqualified as aforesaid, jurors may be so returned by such disinterested person as the court may appoint, and such person shall be sworn, as provided in the preceding section.

Re-enacting § 804 R. S. U. S., 1 Comp. Stat. p. 625, 4 Fed. Stat. Ann. 742, Pierce, Code § 7458.

SEC. 281. When special juries are ordered in any district court, they shall be returned by the marshal in the same manner and form as is required in such cases by the laws of the several States.

Re-enacting § 805 R. S. U. S., 1 Comp. Stat. p. 626, 4 Fed. Stat. Ann. p. 743, Pierce, Code § 7460.

SEC. 282. Every grand jury impaneled before any district court shall consist of not less than sixteen nor more than twenty-three persons. If of the persons summoned less than sixteen attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose.

Superseding § 808 R. S. U. S., 1 Comp. Stat. p. 626, 4 Fed. Stat. Ann. p. 743, Pierce, Code § 7463.

SEC. 283. From the persons summoned and accepted as grand jurors, the court shall appoint the foreman, who shall have power to administer oaths and affirmations to witnesses appearing before the grand jury.

Re-enacting § 809 R. S. U. S., 1 Comp. Stat. p. 627, 4 Fed. Stat. Ann. p. 744, Pierce, Code § 7464.

SEC. 284. No grand jury shall be summoned to attend any district court unless the judge thereof, in his own discretion or upon a notification by the district attorney that such jury will be needed, orders a venire to issue therefor. If the United States attorney for any district which has a city or borough containing at least three hundred thousand inhabitants shall certify in writing to the district judge, or the senior district judge of the district, that the exigencies of the public service require it, the judge may, in his discretion, also order a venire to issue for a second grand jury. And said court may in term order a grand jury to be summoned at such time, and to serve such time as it may direct, whenever, in its judgment, it may be proper to do so. But nothing herein shall operate to extend beyond the time permitted by law the imprisonment before indictment found of a person accused of a crime or offense, or the time during which a person so accused may be held under recognizance before indictment found.

Superseding § 810, R. S. U. S., 1 Comp. Stat. p. 627, 4 Fed. Stat. Ann. p. 744, Pierce, Code § 7465.

SEC. 285. The district courts, the district courts of the Territories, and the Supreme Court of the District of Columbia may discharge their grand juries whenever they deem a continuance of the sessions of such juries unnecessary.

Superseding § 811 R. S. U. S., 1 Comp. Stat. p. 627, 4 Fed. Stat. Ann. 744, Pierce Code § 7466.

SEC. 286. No person shall serve as a petit juror in any district court more than one term in a year; and it shall be sufficient cause of challenge to any juror called to be sworn in any case that he has been summoned and attended said court as a juror at any term of said court held within one year prior to the time of such challenge.

Superseding § 812 R. S. U. S., 1 Comp. Stat. p. 627, 4 Fed. Stat. Ann. p. 744, Pierce, Code § 7467.

SEC. 287. When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to six peremptory challenges On the trial of any other felony, the defendant shall be entitled to ten and the United States to six peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers.

Superseding § 819 R. S. U. S., 1 Comp. Stat. p. 628, 4 Fed. Stat. Ann. p. 745, Pierce, Code § 7474.

SEC. 288. In any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, it shall be sufficient cause of challenge to any person drawn or summoned as a juryman or talesman—

First, that he is or has been living in the practice of bigamy, polygamy, or unlawful cohabitation with more than one woman, or that he is or has been guilty of an offense punishable either by sections one or three of an Act entitled "An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two, or by section fifty-three hundred and fifty-two of the Revised Statutes of the United States, or the Act of July first, eighteen hundred and sixty-two, entitled "An Act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain Acts of the legislative assembly of the territory of Utah"; or

Second, that he believes it right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman.

Any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge; and other evidence may be introduced bearing upon the question raised by such challenge; and this question shall be tried by the court.

But as to the first ground of challenge before mentioned, the person challenged shall not be bound to answer if he shall say upon his oath that he declines on the ground that his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him for any offense above named; but if he declines to answer on any ground, he shall be rejected as incompetent.

Re-enacting the Act of March 22, 1882, § 5, 22 Stat. at L. 30, 3 Comp. Stat. p. 3634, 1 Fed. Stat. Ann. p. 705, Pierce, Code § 2878.

## CHAPTER THIRTEEN.

### GENERAL PROVISIONS.


Sec.
289. Circuit courts abolished; records of to be transferred to district courts.
290. Suits pending in circuit courts to be disposed of in district courts.
291. Powers and duties of circuit courts imposed upon district courts.
292. References to laws revised in this act deemed to refer to sections of act.
293. Sections 1 to 5, Revised Statutes, to govern construction of this act.
294. Laws revised in this act to be construed as continuations of existing laws.
295. Inference of legislative construction not to be drawn by reason of arrangement of sections.
296. Act may be designated as "The Judicial Code."


SEC. 289. The circuit courts of the United States, upon the taking effect of this Act, shall be, and hereby are, abolished; and thereupon, on said date, the clerks of said courts shall deliver to the clerks of the district courts of the United States for their respective districts all the journals, dockets, books, files, records, and other books and papers of or belonging to or in any manner connected with said circuit courts; and shall also on said date deliver to the clerks of said district courts all moneys, from whatever source received, then remaining in their hands or under their control as clerks of said circuit courts, or received by them by virtue of their said offices. The journals, dockets, books, files, records, and other books and papers so delivered to the clerks of the several district courts shall be and remain a part of the official records of said district courts, and copies thereof, when certified under the hand and seal of the clerk of the district court, shall be received as evidence equally with the originals thereof; and the clerks of the several district courts shall have the same authority to exercise all the powers and to perform all the duties with respect thereto as the clerks of the several circuit courts had prior to the taking effect of this Act.

SEC. 290. All suits and proceedings pending in said circuit courts on the date of the taking effect of this Act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and disposed of in the district courts in the same manner and with the same effect as if originally begun therein, the record thereof being entered in the records of the circuit courts so transferred as above provided.

SEC. 291. Wherever, in any law not embraced within this Act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall, upon the taking effect of this Act, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts.

SEC. 292. Wherever, in any law not contained within this Act, a reference is made to any law revised or embraced herein, such reference, upon the taking effect hereof, shall be construed to refer to the section of this Act into which has been carried or revised the provision of law to which reference is so made.

SEC. 293. The provisions of sections one to five, both inclusive, of the Revised Statutes, shall apply to and govern the construction of the provisions of this Act. The words "this title," wherever they occur herein, shall be construed to mean this Act.

SEC. 294. The provisions of this Act, so far as they are substantially the same as existing statutes, shall be construed as continuations thereof, and not as new enactments, and there shall be no implication of a change of intent by reason of a change of words in such statute, unless such change of intent shall be clearly manifest.

See Introduction, "The Interpretation of The Judicial Code", and Lewis' Sutherland, Statutory Construction, § 403.

SEC. 295. The arrangement and classification of the several sections of this Act have been made for the purpose of a more convenient and orderly arrangement of the same, and

therefore no inference or presumption of a legislative construction is to be drawn by reason of the chapter under which any particular section is placed.

SEC. 296. This Act may be designated and cited as "The Judicial Code."

## CHAPTER FOURTEEN.

### REPEALING PROVISIONS.


Sec.
297. Sections, acts, and parts of acts repealed.
298. Repeal not to affect tenure of office, or salary, or compensation of incumbents, etc.
299. Accrued rights, etc., not affected.
300 Offenses committed, and penalties, forfeitures, and liabilities incurred, how to be prosecuted and enforced.
301. Date this act shall be effective.


SEC. 297. The following sections of the Revised Statutes and Acts and parts of Acts are hereby repealed:

Sections five hundred and thirty to five hundred and sixty, both inclusive; sections five hundred and sixty-two to five hundred and sixty-four, both inclusive; sections five hundred and sixty-seven to six hundred and twenty-seven, both inclusive; sections six hundred and twenty-nine to six hundred and forty-seven, both inclusive; sections six hundred and fifty to six hundred and ninety-seven, both inclusive; section six hundred and ninety-nine; sections seven hundred and two to seven hundred and fourteen, both inclusive; sections seven hundred and sixteen to seven hundred and twenty, both inclusive; section seven hundred and twenty-three; sections seven hundred and twenty-five to seven hundred and forty-nine, both inclusive; sections eight hundred to eight hundred and twenty-two, both inclusive; sections ten hundred and forty-nine to ten hundred and eighty-eight, both inclusive; sections ten hundred and ninety-one to ten hundred and ninety-three, both inclusive, of the Revised Statutes.

"An Act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from State courts, and for other purposes," approved March third, eighteen hundred and seventy-five.

Section five of an Act entitled "An Act to amend section

fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two; but sections six, seven, and eight of said Act, and sections one, two, and twenty-six of an Act entitled "An Act to amend an Act entitled 'An Act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' approved March twenty-second, eighteen hundred and eighty-two," approved March third, eighteen hundred and eighty-seven, are hereby continued in force.

"An Act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government," approved March third, eighteen hundred and eighty-three.

"An Act regulating appeals from the supreme court of the District of Columbia and the supreme courts of the several Territories," approved March third, eighteen hundred and eighty-five.

"An Act to provide for the bringing of suits against the Government of the United States," approved March third, eighteen hundred and eighty-seven, except sections four, five, six, seven, and ten thereof.

Sections one, two, three, four, six, and seven of an Act entitled "An Act to correct the enrollment of an Act approved March third, eighteen hundred and eighty-seven, entitled 'An Act to amend sections one, two, three, and ten of an Act to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes,' approved March third, eighteen hundred and seventy-five," approved August thirteenth, eighteen hundred and eighty-eight.

"An Act to withdraw from the Supreme Court jurisdiction of criminal cases not capital and confer the same on the circuit courts of appeals," approved January twentieth, eighteen hundred and ninety-seven.

"An Act to amend sections one and two of the Act of March third, eighteen hundred and eighty-seven, Twenty-

fourth Statutes at Large, chapter three hundred and fifty-nine," approved June twenty-seventh, eighteen hundred and ninety-eight.

"An Act to amend the seventh section of the Act entitled 'An Act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes,' approved March third, eighteen hundred and ninety-one, and the several Acts amendatory thereto," approved April fourteenth, nineteen hundred and six.

All Acts and parts of Acts authorizing the appointment of United States circuit or district judges, or creating or changing judicial circuits, or judicial districts or divisions thereof, or fixing or changing the times or places of holding court therein, enacted prior to February first, nineteen hundred and eleven.

Sections one, two, three, four, five, the first paragraph of section six, and section seventeen of an Act entitled "An Act to create a commerce court, and to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes," approved June eighteenth, nineteen hundred and ten.

Also all other Acts and parts of Acts, in so far as they are embraced within and superseded by this Act, are hereby repealed; the remaining portions thereof to be and remain in force with the same effect and to the same extent as if this Act had not been passed.

SEC. 298. The repeal of existing laws providing for the appointment of judges and other officers mentioned in this Act, or affecting the organization of the courts, shall not be construed to affect the tenure of office of the incumbents (except the office be abolished), but they shall continue to hold their respective offices during the terms for which appointed, unless removed as provided by law; nor (except the office be abolished) shall such repeal affect the salary or fees or com-

pensation of any officer or person holding office or position by virtue of any law.

SEC. 299. The repeal of existing laws, or the amendments thereof, embraced in this Act, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding, including those pending on writ of error, appeal, certificate, or writ of certiorari, in any appellate court referred to or included within, the provisions of this Act, pending at the time of the taking effect of this Act, but all such suits and proceedings, and suits and proceedings for causes arising or acts done prior to such date, may be commenced and prosecuted within the same time, and with the same effect, as if said repeal or amendments had not been made.

SEC. 300. All offenses committed, and all penalties, forfeitures, or liabilities incurred prior to the taking effect hereof, under any law embraced in, amended, or repealed by this Act, may be prosecuted and punished, or sued for and recovered, in the district courts, in the same manner and with the same effect as if this Act had not been passed.

SEC. 301. This Act shall take effect and be in force on and after January first, nineteen hundred and twelve.

Approved, March 3, 1911.

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